TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 92

RICHARD H. McGOON, PLAINTIFF IN ERROR,

vs.

SAMUEL H. SCALES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

FILED SEPTEMBER 10, 1866.

SUPREME COURT OF THE UNITED STATES.

No. 284.

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vs.

SAMUEL H. SCALES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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1 Circuit Court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the Circuit Court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the thirteenth day) of April, A. D. 1868, present the Honorable Andrew G. Miller, district judge, presiding, Cassius Fairchild, marshal, Edward Kurtz, clerk, among other, the following proceedings were had, to wit:

RICHARD H. McGOON, plaintiff,
vs.
SAMUEL H. SCALES, defendant. } At law.

Be it remembered that heretofore, to wit, on the first day of January, A. D. 1866, came the said plaintiff, by his attorneys, Messrs. Finches, Lynde & Miller, and filed his declaration in ejectment, together with a notice for an appearance on the first Monday of January, 1866; also an affidavit of authority to commence this suit, and proof of service on the defendant on the 8th day of December, 1865, which declaration, notice, affidavit, and proof of service are as follows:

Circuit Court of the United States, of the January term, A. D. 1866, for the district of Wisconsin.

Declaration in ejectment.

DISTRICT OF WISCONSIN, *ss.*

Richard H. McGoon, who is a citizen of the State of Illinois, plaintiff in this suit, by Finches, Lynde & Miller, his attorneys, complains of Samuel H. Scales, defendant in this suit, and who is a citizen of the State of Wisconsin:

2 For that whereas the said plaintiff heretofore, to wit, on the first day of August, in the year of our Lord one thousand eight hundred and sixty-five, was possessed of the southeast quarter of section thirty-two (32) in township one (1) north of range two (2) east of the fourth principal meridian, in the said district of Wisconsin, of great value, to wit, of the value of twenty-five hundred dollars, which said premises the said plaintiff claims in fee; and the said plaintiff being so possessed thereof, the said defendant afterwards, to wit, on the first day of August, in the year of our Lord one thousand eight hundred and sixty-five, entered into the said premises and ejected the said plaintiff therefrom, and now unjustly and unlawfully withholds from the said plaintiff the possession thereof, to the damage of the plaintiff of twenty-five hundred dollars, and therefore he brings this suit, &c.

FINCHES, LYNDE & MILLER,
Pl'ff's Att'ys.

[50-cent rev. stamp, cancelled.]

REC. 284—1

To Samuel H. Scales:

You are hereby notified that the declaration, with a copy whereof you are now herewith served, and to which copy this notice is subjoined, will be filed in the office of the clerk of said court, in the city of Milwaukee, on the first Monday of January, 1866; that upon filing the same a rule will be entered requiring you to appear and plead to the said declaration on the first Monday of February next, and that if you neglect so to appear, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the said declaration.

Dated this 6th day of December, 1865.

Yours, &c.,

FINCHES, LYNDE & MILLER,
Plff's Atty's.

DISTRICT OF WISCONSIN, *ss*:

H. M. Finch, being duly sworn, deposes and says that he
3 is one of the firm of Finches, Lynde & Miller, the attorneys for Richard H. McGoon, the plaintiff named in the within declaration, and that said firm have written authority and directions from said plaintiff to commence an action of ejectment for the premises within described, against the defendant named in said declaration, and further saith not.

H. M. FINCH.

Subscribed and sworn to before me, this 6th day of December, 1865.

JAMES McFARLIN,
Com'r U. S. Circuit Court, Dist. of Wis.

DISTRICT OF WISCONSIN, *ss*:

Nicholas Smith, being duly sworn, deposes and says that he served the foregoing declaration, notice and affidavit on the within-named defendant, by delivering a true copy to him on the 8th day of December, 1865.

NICHOLAS SMITH.

Subscribed and sworn to before me, this 8th day of December, A. D. 1865.

M. HOLLISTER,
Justice Peace.

[5-cent rev. stamp, cancelled.]

And also, same day, January 1, 1866, filed bond for costs, as follows:

Bond for costs.

Know all men by these presents, that I, Henry M. Finch, of the city of Milwaukee, State of Wisconsin, am held and firmly bound unto Samuel H. Scales, in the sum of two hundred dollars, to be paid

to the said Samuel H. Scales, his executors, administrators or assigns, to which payment, well and truly to be made and done, I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal the second day of January, A. D. 1866.

Whereas an action of ejectment has been commenced at the suit of Richard H. McGoon, plaintiff, against Samuel H. Scales, defendant; now, therefore, the condition of this obligation is such, that if the plaintiff will pay all costs that may be awarded against him, not exceeding the aforesaid sum, then this obligation to be void, else valid.

4

[SEAL.] H. M. FINCH.

Witness—

DISTRICT OF WISCONSIN, *ss*:

H. M. Finch, being sworn, doth say that he is worth the sum of five hundred dollars exclusive of property exempt from execution, and his debts.

H. M. FINCH.

Subscribed and sworn to before me, the first day of January, A. 186 .

Endorsed as follows: Approved and filed January 1st, 1866. A. Scott Sloan, clerk. By James McFarlin, deputy.

And on the same day (January 1, 1866) the plaintiff, by his attorneys, entered a rule to plead, as follows:

Rule to plead.

On motion of Messrs Finches, Lynde & Miller, attorneys for the plaintiff, it is ordered by the court that the defendant plead to the plaintiff's declaration on file by the first Monday of February next, or his default will be entered.

JANUARY 22, 1866.

This day came the defendant, by his attorney, J. H. Knowlton, and filed his plea, as follows:

Circuit Court of the United States for the district of Wisconsin, January term, 1866.

Plea.

UNITED STATES OF AMERICA:

RICHARD H. MAGOON
vs.
SAMUEL H. SCALES. } In ejectment.

And now comes the defendant, Samuel H. Scales, by his attorney, James H. Knowlton, and defends the force and injury, when, &c.,

and says that he is not guilty in manner and form as the said plaintiff hath, in his declaration above, complained against him, the said defendant, and of this he puts himself upon the country, &c.

J. H. KNOWLTON,
Att'y for Defendant.

5 And at the April A. D. 1866 term of said court, on the eighteenth day thereof, to wit, on the first day of May, A. D. 1866, the following proceedings were had to wit:

Trial.

RICHARD H. McGOON
vs.
SAMUEL H. SCALES. } At law.

This day came the parties by their counsel, and the issue herein came on to be tried. Whereupon a jury was called to try the same, who came, to wit: R. W. Ryckman, George Bowman, Israel Stebbins, George W. Clason, F. J. Crosby, J. Fowls, M. C. Cooke, A. J. W. Pierce, Arthur W. Wheelock, John Ruan, Henry T. Thompson, and Andrew Mitchell, twelve free, honest, and lawful men of the district, who were severally sworn, and empanneled, and charged by the court. And the jurors of the jury aforesaid, on their said oaths respectively, do say that they find that the defendant is not guilty in manner and form as the plaintiff hath declared against him.

MAY 2, 1866.

This day came the plaintiff by his counsel, and filed his motion to set aside the verdict, and for a new trial, as follows:

Circuit Court of the United States in and for the district of Wisconsin.

Motion for new trial.

RICHARD H. MAGOON
vs.
SAMUEL H. SCALES.

And now comes the said plaintiff, by Finches, Lynde & Miller, his att'ys, and moves the court now here to set aside the verdict of the jury in the above-entitled cause, and for a new trial, for the reason that the said verdict is contrary to law and against the evidence.

FINCHES, LYNDE & MILLER,
Pl'ff's Att'ys.

Judgment.

SEPTEMBER 11, 1866.

This day came the plaintiff by his attorneys, and by leave of the court withdrew his motion for a new trial. Whereupon it is
6 considered and adjudged by this court now here that the

plaintiff take nothing by his suit, and that the defendant do have and recover of the plaintiff the sum of twenty-six dollars and twenty cents, his costs about his said defense in this behalf by him expended, and that he have execution therefor.

New trial granted under the statute.

SEPTEMBER 12, 1866.

This day came the plaintiff by his counsel, and show to the court that the costs taxed in this cause against him have been paid by him, and moves the court for a new trial under the statute. Whereupon it is ordered by the court that the judgment heretofore entered in this cause be, and the same is, hereby vacated, and a new trial granted.

JANUARY 9, 1867.

This day came the parties by their counsel, and by consent this cause is continued.

MARCH 30, 1867.

Depositions received from the post office, and filed.

APRIL 8, 1867.

This day came the parties by their counsel, and by consent it is ordered by the court that this cause be, and the same hereby is, continued.

APRIL 9, 1867.

This day came the parties by their counsel, and on motion of the plaintiff's counsel, it is ordered by the court that the depositions on file in this cause be, and the same are, published.

SEPTEMBER 7, 1867.

Depositions received from the post office, and filed.

And afterwards, to wit, at a stated term of said court begun and held at the city of Milwaukee, on the second Monday (being the ninth day) of September, A. D. 1867, and on the fourth day thereof, to wit, on the twelfth day of September, A. D. 1867.

Present: The Honorable David Davis, associate justice of
7 the Supreme Court of the United States assigned to this circuit, presiding, and the Honorable Andrew G. Miller, district judge, the following proceedings were had, to wit:

Second trial.

RICHARD H. McGOON
vs.
SAMUEL H. SCALES. } At law.

This day came the parties by their counsel, and the issue herein came on to be tried. Whereupon a jury was called to try the same, who came, to wit: Jason Lathrop, jr., William Blair, Andrew Mitchell,

Philip King, John H. Plath, David Moul, James Sawyer, William H. Sherman, Frederick W. Lyman, John Whiting, Hiram Edgerton, and James H. Foster, twelve free, honest, and lawful men of the district, who were severally sworn and empanneled. And the trial not being concluded, the same was adjourned until Wednesday morning next.

And afterwards, to wit, on the ninth day of said term, to wit, on the eighteenth day of September, A. D. 1867, the following proceedings were had, to wit:

This day came the parties by their counsel, and the trial of the issue herein was resumed, when, by leave of the court, the defendant withdrew a juror, and the cause was continued on the payment by defendant of plaintiff's costs of this term.

And afterwards, to wit, at a stated term of said court begun and held at said city of Milwaukee, on the second Monday (being the thirteenth day) of April, A. D. 1868, present the Honorable Andrew G. Miller, district judge, presiding, and on the third day of said term, to wit, on the 15th day of April, A. D. 1868, the following proceedings were had, to wit:

Trial.

RICHARD H. McGOON
vs.
SAMUEL H. SCALES. } At law.

This day came the parties by their counsel, and the issue
8 herein came on to be tried. Whereupon a jury was called to try the same, who came, to wit: Daniel Daggett, William L. Vincent, Ferdinand Kuehn, Thomas Sugden, Lorenzo Merrill, Peter Wheelock, William W. Johnson, John Fowle, Arba B. Mower, Ira Rowe, Peter Lavis, and Walter H. Moody, twelve free, honest, and lawful men of the district, who were severally sworn and empanneled, and the trial not being concluded, the same was adjourned until to-morrow morning.

Verdict.

APRIL 16, 1868.

This day came the parties by their counsel, and the trial of the issue herein was resumed. And the jurors of the jury aforesaid being charged by the court, on their said oaths respectively, do say that the defendant is not guilty of unlawfully withholding from the plaintiff the possession of the premises described in the declaration, and that the plaintiff is not entitled to recover possession of the same, and came the said plaintiff by his counsel, and moved the court to set aside the verdict, for reasons filed.

Circuit Court of the United States in and for the district of Wisconsin.

Motion to set aside verdict.

RICHARD H. McGOON
vs.
SAMUEL H. SCALES.

And which motion is as follows:

And now comes the said plaintiff, by Finches, Lynde & Miller, his attorneys, and moves the court now here to set aside the verdict in the above-entitled cause, for the reason that the said verdict does not return the fact that after the commencement of the action, but before the trial, the right or title of the plaintiff had failed, and because, upon the said verdict, no judgment can be rendered in favor of the plaintiff in pursuance of law, and because the said verdict is in other respects uncertain, informal, and insufficient, and is contrary to law, and against the evidence.

FINCHES, LYNDE & MILLER,
Pl'ff's Att'ys.

9

APRIL 17, 1868.

This day came the plaintiff by his counsel, and moved the court for a new trial, for reasons filed, as follows:

U. S. Circuit Court for the district of Wisconsin.

Motion for new trial.

RICHARD H. McGOON
vs.
SAMUEL H. SCALES. } At law.

The plaintiff moves for a new trial in the above-entitled cause, for error in law in the charge of the court, and for the reason that the verdict of the jury is contrary to law and the evidence.

FINCHES, LYNDE & MILLER,
Pl'ff's Att'ys.

And now, at this same term, to wit, April term, A. D. 1868, and on the twenty-first day thereof, to wit, on the second day of June, A. D. 1868, the following proceedings were had, to wit:

Motions overruled and judgment.

RICHARD H. McGOON
vs.
SAMUEL H. SCALES. } At law.

This day came the plaintiff by his counsel, and submitted the motions to set aside the verdict and for a new trial. On consideration whereof it is ordered by the court that the said motions be, and hereby are overruled.

And it is considered and adjudged by this court now here that the said plaintiff take nothing by his suit, and that the defendant do have and recover of the said plaintiff, Richard H. McGoon, nine dollars and forty-five cents, his costs about his said defence in this behalf by him expended, and that he have execution therefor.

Judgment roll signed June 2nd, 1868.

Costs $9 45.

EDWARD KURTZ, *Clerk*.

Judgment roll filed June 2d, A. D. 1868, at five o'clock p. m.

EDWARD KURTZ, *Clerk*.

10 And same day (June 2, 1868) stipulation as to making bill of exceptions filed, as follows:

U. S. Circuit Court.

Stipulation.

RICHARD H. McGOON
vs.
SAMUEL H. SCALES. } Ejectment.

DISTRICT OF WISCONSIN, *ss:*

It is hereby stipulated between said parties by their respective attorneys, that true copies of all original deeds and records used by either party at the trial of said action may be used and incorporated in the bill of exceptions, in the place and stead of such originals and each of them; further, that only four or five of the appeals from the Circuit Court orders of La Fayette county, setting aside the sheriff sales, May 25, 1867, may be embodied in such bill of exceptions, and four or five remittiturs of the judgment of the Supreme Court of said State, reversing such orders, may be embodied in such bill of exceptions, with the further statement therein that appeals were taken by the other purchasers at the Corwith sheriff sale, and the Supreme Court made the same order of reversal, and the same remittiturs as in the appeals and remittiturs copied and embodied; that of James H. Earnest to be embodied; further, that all objections to the introduction or competency of any of the evidence, used or introduced by either party at said trial, may be specifically stated and spread out at length, on such bill of exceptions, by either party, previous to the signing of said bill of exceptions by the judge and court before whom such trial was had.

Dated June 1, 1868.

J. H. KNOWLTON,
Att'y for Defendant, Sam'l H. Scales.
FINCHES, LYNDE & MILLER, AND MAGOON,
Att'ys for Pl'ffs.

And same day (June 2, 1868) bill of exceptions signed and filed, as follows:

11 United States Circuit Court.

Ejectment.

RICHARD H. McGOON
vs.
SAMUEL H. SCALES.

DISTRICT OF WISCONSIN, *City of Milwaukee, ss:*

Be it remembered that at the April general term of said United States Circuit Court, begun and held at the city of Milwaukee, in the district of Wisconsin, on the second Monday of April, A. D. 1868, Hon Andrew G. Miller, district judge, presiding, on the third day of said term, being April 15, 1868, the aforesaid issue so joined between said parties aforesaid came on to be tried by a jury for that purpose empannelled; at which day came there as well said plaintiff as said defendant, by their respective attorneys, and upon the trial of said issue the counsel for the plaintiff, to maintain and prove said issue on his part, offered and gave in evidence the following:

First. A certified copy of a patent from the United States for the premises, of which patent the following is a copy:

Patent.—United States to Hezekiah H. Gear.—Certificate No. 14,262

The United States of America to all to whom these presents shall come, greeting:

Whereas Hezekiah H. Gear, of Jo Daviess county, Illinois, has deposited in the General Land Office of the United States a certificate of the register of the land office at Mineral Point, whereby it appears that full payment has been made by the said Hezekiah H.
12 Gear, according to the provisions of the act of Congress of 24 of April, 1820, entitled "An act making further provision for the sale of the public lands," for the southeast quarter of section thirty-two, in township one north of range two east, in the district of lands subject to sale at Mineral Point, Wisconsin, containing one hundred and sixty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Hezekiah H. Gear.

Now know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Hezekiah H. Gear, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Hezekiah H. Gear and to his heirs and assigns forever.

In testimony whereof I, Millard Fillmore, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

And it is considered and adjudged by this court now here that the said plaintiff take nothing by his suit, and that the defendant do have and recover of the said plaintiff, Richard H. McGoon, nine dollars and forty-five cents, his costs about his said defence in this behalf by him expended, and that he have execution therefor.

Judgment roll signed June 2nd, 1868.

Costs $9 45.

EDWARD KURTZ, *Clerk*.

Judgment roll filed June 2d, A. D. 1868, at five o'clock p. m.

EDWARD KURTZ, *Clerk*.

10 And same day (June 2, 1868) stipulation as to making bill of exceptions filed, as follows:

U. S. Circuit Court.

Stipulation.

RICHARD H. McGOON
vs.
SAMUEL H. SCALES. } Ejectment.

DISTRICT OF WISCONSIN, *ss:*

It is hereby stipulated between said parties by their respective attorneys, that true copies of all original deeds and records used by either party at the trial of said action may be used and incorporated in the bill of exceptions, in the place and stead of such originals and each of them; further, that only four or five of the appeals from the Circuit Court orders of La Fayette county, setting aside the sheriff sales, May 25, 1867, may be embodied in such bill of exceptions, and four or five remittiturs of the judgment of the Supreme Court of said State, reversing such orders, may be embodied in such bill of exceptions, with the further statement therein that appeals were taken by the other purchasers at the Corwith sheriff sale, and the Supreme Court made the same order of reversal, and the same remittiturs as in the appeals and remittiturs copied and embodied; that of James H. Earnest to be embodied; further, that all objections to the introduction or competency of any of the evidence, used or introduced by either party at said trial, may be specifically stated and spread out at length, on such bill of exceptions, by either party, previous to the signing of said bill of exceptions by the judge and court before whom such trial was had.

Dated June 1, 1868.

J. H. KNOWLTON,
Att'y for Defendant, Sam'l H. Scales.
FINCHES, LYNDE & MILLER, AND MAGOON,
Att'ys for Pl'ff's.

And same day (June 2, 1868) bill of exceptions signed and filed, as follows:

11 United States Circuit Court.

Ejectment.

RICHARD H. McGOON
vs.
SAMUEL H. SCALES.

DISTRICT OF WISCONSIN, *City of Milwaukee, ss:*

Be it remembered that at the April general term of said United States Circuit Court, begun and held at the city of Milwaukee, in the district of Wisconsin, on the second Monday of April, A. D. 1868, Hon Andrew G. Miller, district judge, presiding, on the third day of said term, being April 15, 1868, the aforesaid issue so joined between said parties aforesaid came on to be tried by a jury for that purpose empannelled; at which day came there as well said plaintiff as said defendant, by their respective attorneys, and upon the trial of said issue the counsel for the plaintiff, to maintain and prove said issue on his part, offered and gave in evidence the following:

First. A certified copy of a patent from the United States for the premises, of which patent the following is a copy:

Patent.—United States to Hezekiah H. Gear.—Certificate No. 14,262

The United States of America to all to whom these presents shall come, greeting:

Whereas Hezekiah H. Gear, of Jo Daviess county, Illinois, has deposited in the General Land Office of the United States a certificate of the register of the land office at Mineral Point, whereby it appears that full payment has been made by the said Hezekiah H.
12 Gear, according to the provisions of the act of Congress of 24 of April, 1820, entitled "An act making further provision for the sale of the public lands," for the southeast quarter of section thirty-two, in township one north of range two east, in the district of lands subject to sale at Mineral Point, Wisconsin, containing one hundred and sixty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Hezekiah H. Gear.

Now know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Hezekiah H. Gear, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Hezekiah H. Gear and to his heirs and assigns forever.

In testimony whereof I, Millard Fillmore, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the first day of September, in the year of our Lord one thousand eight hundred and fifty-two, and of the independence of the United States the seventy-seventh.

By the President:

[L. S.]

MILLARD FILLMORE.
By ALEX. McCORMICK,
Ass't Sec'y.

Recorded vol. 30, page 29, examined.

13

E. S. TERRY,
Recorder of the General Office.

[U. S. rev. stamp, cancelled.]

GENERAL LAND OFFICE,
March 4, 1864.

I, James M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from the patent records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[L. S.]

J. N. EDMUNDS,
Commissioner of the General Land Office.

REGISTER'S OFFICE, *La Fayette County, Wis.*

Received for record August 25th, A. D. 1864, at 10 o'clock a.m., and recorded in vol. 2 of deeds, on page 498.

S. L. C. MACKAY, *Register.*

Secondly. Said plaintiff further offered and gave in evidence a quit-claim deed from said Gear, patentee, and his wife, of which the following is a copy:

Quit-claim deed.—Hezekiah H. Gear and wife to Richard H. McGoon.

This indenture, made the sixteenth day of June, in the year of our Lord one thousand eight hundred and sixty-five, between Hezekiah H. Gear, and Francinia T. Gear, his wife, parties of the first

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part, and Richard H. McGoon, party of the second part, and all of the county of Jo Daviess, and State of Illinois, witnesseth: that the said parties of the first part, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, and quit-claimed, and by these presents do give, grant, bargain, sell, remise, release, and quit-claim unto said party of the second part, to his heirs and assigns forever, all those certain pieces, parcels, or tracts of land and real estate lying and being in the county of LaFayette and State of Wisconsin, known and described as fol-

lows, to wit: the east half of the northeast quarter of section thirty-one, (31;) the southeast quarter and the southwest quarter both of section thirty-one, (31;) the west half of the northwest quarter of section thirty-two, (32;) the southeast quarter of section thirty-two, (32;) and all that part of the southwest quarter of section thirty-two (32) lying west of a brook rnnning north and south through said quarter section and about equally dividing it; all of said tracts lying and being in township one (1) north of range two (2) east of the fourth principal meridian, and containing seven hundred and twenty (720) acres, be the same more or less, to have and to hold the same, together with all and singular, the appurtenances and privleges thereunto belonging or in anywise thereunto appertaining, and all the estate, right title and interest and claim whatsoever of the said parties of the first part, either in law or in equity, to the only proper use, benefit and behoof of the said party of the second
15 part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

[SEAL.] H. H. GEAR.
[SEAL.] FRANCINIA T. GEAR.

Signed, sealed and delivered in the presence of—
PATRICK MULLIGAN.
G. A. MARSHALL.

STATE OF ILLINOIS, *County of Jo Daviess, ss*:

On the thirteenth day of June, A. D. 1867, came before me Hezekiah H. Gear, and Francinia T. Gear, his wife, the above-named grantors, and acknowledged the execution of the foregoing deed freely and voluntarily for the uses and purposes therein mentioned, as witness my hand and notorial seal the day and year above written.

[L. S.] GEO. A. MARSHALL,
Notary Public.

[U. S. rev. stamp, cancelled.]

REGISTER'S OFFICE, *La Fayette Co., Wis.*

Received for record July 1st, A. D. 1865, at 3 o'clock p. m., and recorded in vol. 4 of deeds, page 335.

F. SCOTT, *Register.*

Thirdly. Said plaintiff produced and read in evidence a trust deed from said Gear and wife to James Campbell, trustee, dated November 2, 1842, recorded in La Fayette county, November 19th, 1842, of which the following is a certified copy:

16 Rec'd Nov. 19, 1842, at 11 o'clock p. m.

This indenture, made at the city of Galena, and State of Illinois, on the second day of November, Anno Domino one thousand eight

hundred and forty-two, between Hezekiah H. Gear, and Deborah his wife, of the city and State aforesaid, of the first part, and James Campbell, trustee for the president, directors, and company of the State Bank of Illinois, of the second part, witnesseth: The said Hezekiah H. Gear stands and is indebted to the president, directors, and company of the State Bank of Illinois in the sum of fifty thousand dollars cash, to satisfy which the said State Bank hath agreed to take the real estate hereinafter mentioned, to be conveyed to James Campbell, as trustee; now, know ye, that in consideration of said sum, as also in the confidence and trust hereinafter expressed, the receipt of which said sum is hereby acknowledged, the said Hezekiah H. Gear, and Deborah his wife, hath granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, convey, and confirm, and release unto the said James Campbell, and to his successors and assigns forever, all those certain tracts of land situate, lying and being in the Territory of Wisconsin, as hereinafter described, namely, the south fraction (3) three of the southwest quarter of section number nine, (9,) the northeast quarter of the northwest fractional quarter of section number nine, (9,) the east half of the southwest quarter, and the southeast
17 quarter of section number four, township number two, (2, of range number three west, and situated in the county of Grant and Territory of Wisconsin; the whole containing three hundred and twenty 77–100 acres, as per receiver's receipt numbers 1433, 1849, 1493, and 1494.

Also a tract of land containing one hundred and sixty acres in the county of Iowa, in the Territory aforesaid, being the southeast quarter of section number thirty-one (31) in township one, (1) of range number two (2) east, the same as entered by said Gear at the Mineral Point land office, on the 10th of February 1836. Also the following described lots of land in the county of Iowa, and Territory aforesaid, being the same as deeded by John Atchinson and Emily C., his wife, of Galena, to said Gear, as per deed bearing date 12th January, 1836, and duly recorded at Mineral Point in Liber "A," pages 24 and 25, to wit: the northwest quarter, the southeast quarter, and the south half of the east half of the northeast quarter of section number thirty-two, (32;) the southwest quarter and the northeast quarter of section number thirty-one, (31,) and all the part of the southwest quarter of section number thirty-two (32) lying west of a brook running north and south through same, all in town. one north of range two (2) east, which said tracts of land contain seven hundred and sixty acres, more or less. It is also understood and agreed by and between the parties to these presents, that all leases now existing upon the last-mentioned tract of seven hundred and sixty acres (if any) are to the use and benefit of the party of the second part, to have and to hold the above-described premises and lots of land, together with all and singular the buildings, improvements, privileges, and appurtenances thereunto in anywise belonging or apper-
18 taining, unto the said James Campbell, and his heirs and assigns forever, in trust for the object and uses following, to wit. And it is hereby declared and agreed by and between all par-

ties to these presents that the said grant of the lands and premises hereinbefore described is made by said Gear and wife to said James Campbell, and his heirs, to stand seized of the said premises upon the trust and confidence that the said lands shall be sold by him and his heirs, executors, or administrators for such sum or sums as shall be directed by said president, directors, and company of said State Bank of Illinois, and the proceeds of any such sale are to be applied, after deducting all necessary costs and expenses, to the sole use and benefit of said president, directors, and company, or their assigns, and if said lands are not sold by said trustee as aforesaid, then the said Campbell, or his heirs or executors, are to stand seized of the premises hereinbefore conveyed for the use of the said president, directors and company of said State Bank of Illinois, and their successors in office, and assigns. And the said party of the first part, for the consideration aforesaid, hereby bind themselves, their heirs, executors, administrators, and assigns, to warrant and forever defend the said deeded property unto the said party of the second part, his heirs, executors, and assigns, from and against the claim or demand of them, the said party of the first part, their heirs, executors, administrators or assigns, and from and against the claim or demand of all persons whatsoever.

In witness whereof the party of the first part have here-
19 unto affixed their hands and seals the day and year first above written.

[SEAL.] H. H. GEAR.
[SEAL.] DEBORAH GEAR.

Signed, sealed, and delivered in presence of—
RUSSELL BLAKELY.
WM. C. BOSTWICK.

STATE OF ILLINOIS, *Jo Daviess County, ss*:

Be it known that on the third day of November, A. D. 1842, personally appeared before me, a notary public, within and for said city Hezekiah H. Gear, who is personally known to me to be the identical person whose signature appears to the foregoing deed of conveyance, and who acknowledged to me that he had signed, sealed, and delivered the same as his ree act and deed, for the uses and purposes therein expressed; and Deborah, wife of said Hezekiah, who is also personally known to me, acknowledged to me, after I had examined her separate and apart from her said husband, and had made her acquainted with the contents of said deed, that she had signed the same and relinquished thereby all her right and title of dower in the above granted premises voluntarily, freely, and without compulsion of her said husband.

In witness whereof I have hereunto set my hand and affixed my seal of office, this third day of November, A. D. 1842, at the city of Galena.

[SEAL. W. C. B.] WM. C. BOSTWICK,
Notary Public, City of Galena.
ROBERT DOUGHERTY, *Register.*

20 STATE OF WISCONSIN, *County of La Fayette, ss*:

I, Thomas C. L. Mackay, register of deeds in and for the county of LaFayette, in the State of Wisconsin, do hereby state and certify that I have carefully compared the foregoing copy with the original deed of trust and written instrument entered of record in my office, in volume one of mortgages, on pages 153, 154 and 155, and that the same is a true, full, and correct transcript from and of said original deed of trust and written instrument so entered of record in my office as aforesaid, and of the whole of said original.

In testimony whereof I have hereunto set my hand and affixed my official seal, at the village of Darlington, in said county and State, this 31st day of December, A. D. 1864.

[L. S.] (Signed) THOMAS C. L. MACKAY,
Register of Deeds in and for La Fayette County and State of Wisconsin.

[U. S. rev. stamps, cancelled.]

Endorsed: H. H. Gear and wife to James Campbell. Certified copy of deed of trust.

Fourthly. Said plaintiff offered and gave in evidence a deed from the president, directors, and company of the State Bank of Illinois to Uri Manly, John Calhoun and Nicholas H. Ridgely, dated
21 October 31, 1848, recorded in Sangamon county, Illinois, August 8, 1850, recorded in Iowa county, Wisconsin, July 23d, 1856, and in La Fayette county, Wisconsin, November 3d, 1866, of which deed the following is a copy:

Deed.—The President, Directors & Co. of the State Bank of Illinois, to Uri Manly, John Calhoun, and Nicholas Ridgely.

This indenture, made and entered into this 31st day of October, A. D. 1848, between the president, directors and company of the State Bank of Illinois, of the first part, and Uri Manly, John Calhoun, and Nicholas H. Ridgely, of the second part, witnesseth: That whereas by the second section of an act of the general assembly of the State of Illinois, entitled "An act formally closing the affairs of the State Bank of Iilinois," approved March 1st, 1847, it is provided as follows: "Sec. 2. If the affairs of the said bank shall not be closed before the said first day of November, 1848, the governor shall appoint three trustees, whose duty it shall be to take charge of all the assetts of the said bank and wind up its affairs, they being governed in doing so by the provisions of an act entitled "An act supplemental to an act to reduce the public debt one million of dollars, and to put the Bank of Illinois into liquidation," approved the 28th Febuary, 1845, so far as said provisions are applicable; and whereas it has been found impracticable to close the affairs of said bank
22 before the said first day of November, 1848, and the said president, directors, and company of the State Bank of Illinois being desirous to comply with the provisions of the said second sec-

tion of the act aforesaid, according to its true intent and meaning, and to secure the creditors and stockholders of said bank the benefit of the assets of said bank, and the governor of the State of Illinois having designated the said Uri Manly, John Calhoun and Nicholas H. Ridgely as the three trustees to be appointed by him under the provisions of the second section of the act aforesaid:

Now this indenture witnesseth, that the said president, directors, and company of the State Bank of Illinois, in consideration of the premises aforesaid, and for the further consideration of the sum of one dollar to them in hand paid, have given, granted, bargained, sold, and assigned, and by these presents do give, grant, bargain, sell, transfer, and assign to the said Uri Manly, John Calhoun and Nicholas H. Ridgely, all the assets and property of the said president, directors, and company of the said State Bank of Illinois, and all the lands and town lots of, or belonging to, the said bank, and all the estate of said bank, real, personal, or mixed of every kind, nature or description, and wherever situated, and all the rights and credits and choses in action belonging to or due to said bank, and all judgments recovered by said bank, all bonds, notes, cove-
23 nants and agreements made to said bank, or to any other person or corporation in trust of said bank, and every kind or description of property or money in possession or in action belonging or due to said bank, or in, or to which said bank has any right, claim, or interest, and all stocks of any kind held or claimed by or for said bank.

To have and to hold all the aforesaid property and choses in action to the said Uri Manly, John Calhoun, and Nicholas H. Ridgely, and to the survivor of them, and the heirs, executors and administrators of said survivor for ever, yet upon the following trusts and conditions, to wit, the said Uri Manly, John Calhoun, and Nicholas H. Ridgely, and the survivor or survivors of them shall proceed with all reasonable diligence compatible with the true interests of the parties interested to realize the assets of said bank hereby conveyed to them, by collecting the debts due to said bank, selling the real and personal property, stocks, &c., hereby conveyed, and with the proceeds paying all the debts due from said bank, of every kind and description, and after all the debts due from said bank are paid, they shall distribute the surplus amongst the stockholders in said bank in proportion to their respective amounts of stock. But out of the proceeds of all the assets hereby conveyed and assigned the said trustees shall, before making any distribution to creditors or stockholders, pay first all taxes and assessments due or to become due on all the property in their hands under the assignment and belonging to this trust,
24 and also all necessary expenses, costs and charges incurred in taking care of said property or in discharging their trust in relation thereto, and also all debts contracted and now unpaid, in winding up the affairs of said bank, since the first day of March, A. D. 1843.

Secondly. They are to retain for their services in executing this trust the sum of three thousand dollars per annum, to be divided

amongst them in proportion to the amount of services rendered by each respectively, and the said trustees are hereby authorized, in collecting the debts and selling the property herein conveyed, to receive in payment any owing by said bank, whether the same be then due and payable or becoming due and payable thereafter, and whether the same be evidenced by note, certificate, bond or other evidence of indebtedness; and the said trustees in executing this trust shall so far as practicable conform to the provisions of the acts of the general assembly hereinbefore recited and refered to. And in the event that one or more of said trustees should die, resign, refuse to act, or be legally removed from said trust, his place shall be filled by a court of competent jurisdiction, and in that event an equal interest in all the property and choses in action hereby conveyed and not then disposed of shall be conveyed to said trustees to be appointed, and he shall have the same power and authority and be subject to the same trusts as the original trustees.

And all deeds of conveyance for real estate and transfers of
25 and agreements of personal property made by said trustees, or the survivor of them, or by such survivor or survivors, together with the new trustees herein provided for, shall be good and sufficient to transfer to the purchaser all the rights, title and interest of the president, directors and company of the State Bank of Illinois in and to such property so sold and conveyed.

In testimony whereof the said president, directors and company of the State Bank of Illinois have caused Thomas Mather, president of said bank, to affix his name, and have also caused the seal of said bank to be affixed hereto at the banking-house of said bank in Springfield, this 31st day of October, A. D. 1848.

[L. S.] THOMAS MATHER, *Pres't.*

Recorded, August 8th, 1850.

B. TALBOTT,
Clerk and Ex-officio Recorder, S. Co., Ills.

STATE OF ILLINOIS, *Sangamon County, ss:*

I, Charles H. Lamphier, clerk of the Circuit Court and ex-officio recorder of deeds, mortgages, and other instruments required by law to be recorded within and for said county, do hereby certify that the foregoing pages contain a true and correct copy of a deed from the president, directors and company of the State Bank of Illinois, to Uri Manly, John Calhoun and Nicholas H. Ridgely, trustees, as
26 fully and completely as the same appears from the records in my said office.

Recorded in book "E E," pages 228, 229 and 230.

Given under my hand and seal of office at Springfield, Illinois, this 11th day of January, A. D. 1865.

CHAS. H. LAMPHIER,
Clerk and Ex-offi. Rec., S. Co., Ills.

[S. rev. stamp, cancelled.]

STATE OF ILLINOIS, *Sangamon County, ss:*

I, Edward T. Rice, judge of the Circuit Court of the 18th judicial circuit of the State of Illinois, and presiding judge of the said Circuit Court for the county of Sangamon, do hereby certify that the foregoing attestation of Charles H. Lamphier, clerk of the said Circuit Court and ex-officio register of deeds, mortgages, and other instruments, is in due form and by the proper officer.

In testimony whereof I have hereunto set my hand this 18th day of September, A. D. 1866.

EDWARD T. RICE,
Judge of said Court.

[U. S. rev. stamp, cancelled.]

STATE OF ILLINOIS, *Sangamon County, ss:*

27 I, Charles H. Lamphier, clerk of the Circuit Court in and for said county of Sangamon and ex-officio register of deeds, mortgages and other instruments to be recorded in said county of Sangamon, do hereby certify that I am well acquainted with the handwriting of the honorable Edward S. Rice, whose name is affixed to the foregoing certificate, and that the same is his own handwriting. And I do further certify that he was at the time of signing the same the judge of the Circuit Court of the 18th judicial circuit of the State of Illinois, and presiding judge of the Circuit Court for the county of Sangamon, duly commissioned and qualified.

In testimony whereof I have hereunto set my hand and duly affixed the seal of said court at Springfield, in said county of Sangamon, this twentieth day of September, A. D. 1866.

CHARLES H. LAMPHIER, *Cl'k.*

[U. S. rev. stamp, cancelled.]

STATE OF WISCONSIN, *County of La Fayette, ss:*

REGISTER'S OFFICE.

Rec'd for record Nov. 3d, A. D. 1866, at 12 o'clock m., and recorded in vol. 6 of deeds, on page 378, 379, 380, and 381.

FRANCIS SCOTT, *Register.*

This deed was recorded in Iowa county, Wisconsin, July 23d, 1856.

Fifthly. Said plaintiff further gave in evidence a deed from said trustees and assignees of the State Bank of Illinois, to plain-
28 tiff, dated November 19th, 1862, recorded in Lafayette county, Wisconsin, February 26th, 1864, of which the following is a copy:

Deed.—Trustees State Bank of Illinois to Richard H. McGoon.

This indenture, made this nineteenth day of November, A. D. 1862, between Uri Manly, Nicholas H. Ridgely, and James Campbell, trustees appointed by virtue of an act of the general assembly of the

State of Illinois, entitled an Act for finally closing the affairs of the State Bank of Illinois, approved the first day of March, 1847, and assignees of the president, directors, and company of the State Bank of Illinois of the first part, and Richard H. McGoon, of the county of Jo Daviess and State of Illinois, of the second part, witnesseth: That the said party of the first part, by virtue of the right, power, and authority vested in them by their said appointment as trustees, and by the act authorizing said appointment, and also by the deed of assignment from the president, directors, and company of the State Bank of Illinois, and in consideration of the sum of four thousand eight hundred dollars, do, by these presents, grant, bargain, sell and quit-claim to the said party of the second part, his heirs and assignees forever, those certain lots or tracts of land lying in the county of La Fayette, and State of Wisconsin, and designated as follows, to wit: The east half of the northeast quarter of section thirty-one; the southeast quarter and southwest quarter of section thirty-one; the southeast quarter of section thirty-two; an all that part of the southwest quarter of section thirty-two, lying west of a brook running north and south through said quarter section and about equally dividing it. All of said tracts being in town. one north range two east of the fourth principal meridian, and containing six hundred and forty acres more or less; being land belonging to the president, directors, and company of the State Bank of Illinois, at the expiration of their charter, or acquired by the said trustees in the settlement of the affairs of said bank, since the expiration of the said charter. To have and to hold the said lots or tracts of land to the said Richard H. McGoon, his heirs and assignees, forever.

But the said party of the first part sell only such right to said land as they are authorized and able to convey under the provisions of the act above referred to, they being forbidden by the tenth section of the act of February 28th, A. D. 1845, to give any covenants of warranty or title.

In testimony whereof the said party of the first part have hereunto set their hands and affixed their seals as trustees and assignees as aforesaid, the day and year first above written.

[SEAL.] N. H. RIDGELY.
[SEAL.] JAMES CAMPBELL.
[SEAL.] URI MANLY.

N. W. MATHENY.
VINCENT RIDGELY.

[U. S. rev. stamp, cancelled.]

STATE OF ILLINOIS,
Sangamon County, City of Springfield, ss:

Be it known, that on the day of the date hereof, before me, N. W. Matheny, clerk county court for Sangamon county, State aforesaid, duly commissioned and qualified, came Uri Manly, Nicholas H. Ridgely, and James Campbell, trustees and assignees of the State

Bank of Illinois, and are personally known to me to be the persons whose names are subscribed to the foregoing conveyance, as a party thereto, and by whom and in whose names the same is proposed to be acknowledged, and acknowledged the said conveyance to be their voluntary act and deed for the purposes therein mentioned.

This acknowledgement is made in conformity with the laws of the State of Illinois.

In witness whereof I have hereunto subscribed my name and affixed my seal of office this fourth day of December, A. D. 1862.

[SEAL.] N. W. MATHENY, *Clerk.*

[U. S. rev. stamp, cancelled.]

STATE OF ILLINOIS,
County of Sangamon, City of Springfield, ss:

I, N. W. Matheny, clerk of the county , in and for said county and State, do hereby certify that N. W. Matheny,
31 whose name is subscribed to the foregoing certificate of acknowledgement of the annexed deed, was at the date of taking such acknowledgement; the acting clerk of the county court in and for said county of Sangamon and State of Illinois, and duly elected, qualified and sworn as such clerk, and duly authorized by law to take such acknowledgment; and that as such clerk full faith and credit are due, and of right ought to be given to all his official acts; and further, that I am well acquainted with the handwriting of such clerk, and know that his signature subscribed to said acknowledgment is genuine; and that the said deed is executed and acknowledged according to the laws of the State of Illinois.

In testimony whereof I have hereunto set my hand officially, and affixed the seal of said county court at my office, in the city of Springfield, this 4th day of December, A. D. 1863.

[SEAL.] N. W. MATHENY,
Clerk of the County Court.

[U. S. rev. stamp, cancelled.]

UNITED STATES OF AMERICA, *State of Illinois, ss:*

I, O. M. Hatch, secretary of state of the State of Illinois, do certify that Noah W. Matheny, who signed the foregoing certificate, is now, and was at the time of signing the same, clerk of the county court in and for the county of Sangamon and State of Illinois, duly commissioned and qualified to office with full power by the law
32 of this State to issue certificates as aforesaid; that said certificate is in due form of law, and by the proper officer, and that full faith and credit are due his official attestations.

In testimony whereof I have hereunto set my hand and the great seal of state at the city of Springfield, this 19th day of December, in the year of our Lord one thousand eight hundred and sixty-two, and the independence of the United States the eighty-seventh.

[SEAL.] O. M. HATCH.
Secretary of State.

[U. S. rev. stamp, cancelled.]

REGISTER'S OFFICE, *La Fayette Co., Wis.*

Rec'd for record February 26th, A. D. 1864, at 8 o'clock p. m., and recorded in vol. 2 of deeds, on pages 172–3.

L. L. C. MACKAY, *Register.*

Sixthly. Said plaintiff produced and gave in evidence a second deed from said trustees and assignees of the State Bank of Illinois to plaintiff, dated July 12, 1865, recorded in La Fayette co. July 14, 1865, of which the following is a copy:

Deed.—Trustees and assignees of the State Bank of Illinois to Richard H. McGoon.

This indenture made this twelfth day of July, A. D. 1865,
33 between Nicholas H. Ridgely and James Campbell, trustees appointed by virtue of an act of the general assembly of the State of Illinois, entitled an "Act for finally closing the affairs of the State Bank of Illinois," approved the first day of March, 1847; and as assignees of the president, directors, and company of the State Bank of Illinois, of the first part, and Richard H. McGoon, of the county of Jo Daviess, and State of Illinois, of the second part, witnesseth: That the said party of the first part, by virtue of the rights, power, and authority vested in them by their said appointment as trustees, and by the act authorizing said appoinment, and also by the deed of assignment by the president, directors and company of the State Bank of Illinois, and in consideration of the sum of one dollar unto them in hand paid by the said party of the second part, do, by these presents, grant, bargain, sell, and quit-claim to the said party of the second part, his heirs and assigns forever, those certain lots or tracts of land and real estate lying and being in the county of Lafayette, and State of Wisconsin, and designated as follows, to wit:

The east half of the southeast quarter of section thirty-one, (31,) the southeast quarter and the southwest quarter, both of section thirty-one, (31), the southeast quarter of section thirty-two, (32,) the west half of the northwest quarter of section thirty-two, (32,) and all that
34 part of the southwest quarter of section thirty-two (32) lying west of a brook running north and south through said quarter section, and about equally dividing it; all of said tracts and real estate lying and being in township one (1) north of range two (2) east of the fourth principal meridian, and containing seven hundred and twenty (720) acres of land, be the same more or less, the same being land belonging to the president, directors and company of the State Bank of Illinois, at the expiration of their charter, or acquired by the said trustees in the settlement of the affairs of said bank since the expiration of the said charter, or acquired by the party of the first part by the deed of assignment aforesaid from the president, directors and company of the State Bank of Illinois unto them as assignees and trustees, to have and to hold the said lots or tracts of land to the said Richard H. McGoon, his heirs and assigns forever. But no covenants of warranty of title are hereby given.

In testimony whereof the said party of the first part have hereunto set their hands and affixed their seals as trustees and assignees as aforesaid, the day and year first above written, at the city of Springfield, in the said State of Illinois.

[SEAL.] N. H. RIDGELY.
[SEAL.] JAMES CAMPBELL.

In presence of—
WALTER CAMPBELL.
WM. R. BEALL.
[U. S. rev. stamp, cancelled.]

35 STATE OF ILLINOIS,
County of Sangamon, City of Springfield, ss:

Be it known that on the day of the date hereof, before me, John A. Hughes, a notary public in and for the city, county and State aforesaid, and duly commissioned and qualified, came personally Nicholas H. Ridgely and James Campbell, aforenamed trustees and assignees of the State Bank of Illinois, who are personally known to me to be the persons whose names are subscribed to the foregoing conveyance as a party thereto, and by whom, and in whose names, the same is proposed to be acknowledged, and acknowledged the [the] said conveyance to be their free voluntary act and deed, for the purposes therein mentioned. The foregoing deed is executed, and this acknowledgement is taken and made in conformity with the laws of the State of Illinois.

In witness whereof I have hereunto subscribed my name and affixed my official seal this twelfth day of July, A. D. 1865.

[SEAL.] JOHN H. HUGHES,
N. Public for Town of Springfield.

REGISTER'S OFFICE, *La Fayette Co., Wis.*

Rec'd for record July 14th, A. D. 1865, at 3 o'clock, p. m., and recorded in volume 4 of deeds, pages 348 and 349

F. SCOTT, *Register.*

36 Seventhly. Said plaintiff produced and gave in evidence a deed from James Campbell, trustee, to plaintiff, dated July 12, 1865, recorded in La Fayette county, July 14th, 1865, of which the following is a copy:

Deed.—James Campbell, trustee, to Richard H. McGoon.

This indenture, made and entered into this twelfth day of July, A. D. 1865, by and between James Campbell, of the county of Sangamon, and State of Illinois, trustee nominated and appointed November 2d, A. D. 1842, by that certain indenture, bearing date on that day, executed by Hezekiah H. Gear, and Deborah Gear his wife, unto James Campbell, thereby conveying the lands hereinafter

described, as by the record of said indenture in volume one (1 of) mortgages, on page 153, in the county of La Fayette and State of Wisconsin, in the register's office thereof, reference being thereunto had, will more fully appear, party of the first part, and Richard H. McGoon, party of the second part, of the county of Jo Daviess, and State of Illinois, witnesseth: That whereas Uri Manly, Nicholas H. Ridgely, and James Campbell, trustees of the State Bank of Illinois, did, among other lands in the State of Wisconsin, sold by them at public aution, at Mineral Point, on the 19th day of November,
37 A. D. 1862, sell and convey to said Richard H. McGoon the tracts hereinafter described, in order more fully to convey the same and to perfect the title therein to the said party of the second part, and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, and with full authority of the several cestui que trusts in said aforementioned indenture fully named their successors and assigns, and in full virtue of the power granted, vested, and conferred in the said party of the first part, hath given, granted, sold, remised, released, aliened, confirmed and quit claimed, and by these presents, as such trustee, and in every respect, doth give, grant, sell, remise, release, alien, confirm and quit-claim unto the said party of the second part, his heirs and assigns forever, all the right, title, trust, equity, interest, claim, lien, power and estate whatsoever of the said party of the first part in and to the tracts and parcels of land and real estate lying and being in the county of La Fayette and State of Wisconsin, known and described as follows, to wit:

The east half of the northeast quarter of section thirty-one, (31,) the southeast quarter and the southwest quarter, both of section thirty-one, (31,) the southeast quarter of section thirty-two, (32,) and all that part of the southwest quarter of section thirty-two (32) lying west of a brook running north and south through said quarter section, and about equally dividing it; and also that further and other tract and real estate heretofore sold and conveyed to
38 James Ingram, and by him subsequently sold and conveyed unto said Richard H. McGoon, party of the second part, described as the west half of the northwest quarter of section thirty-two, (32,) all of said aforementioned tracts and parcels of land and real estate being in township one (1) north of range two (2) east of the fourth principal meridian, containing seven hundred and twenty acres of land, be the same more or less, to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining, and all the estate, right, title, interest, trust, equity, lien, power, claim and control whatsoever of the said party of the first part, either in law or equity, in every respect, whether obtained by virtue of the aforementioned indenture, recorded as aforesaid, or otherwise, to the only proper use, benefit, behoof, emolument, and advantage of the said party of the second part, his heirs and assigns forever.

In testimony whereof the said first party hath hereunto set his hand and seal the day and year first above written.

[SEAL.] JAMES CAMPBELL, *Trustee.*

Signed, sealed, and delivered, in presence of—
WALTER CAMPBELL.
WM. R. BEALL.

[U. S. rev. stamp, cancelled.]

STATE OF ILLINOIS, *County of Sangamon, ss:*

39 On the twelfth day of July, A. D. 1865, personally came before me James Campbell, the above-named grantor, to me known to be the identical trustee and party of the first part, mentioned and described in the foregoing instrument and deed as such trustee and party of the first part therein, and acknowledged before me that he executed the same as such trustee as aforesaid, and in every other respect freely and voluntarily for the uses and purposes therein expressed. The foregoing deed is made and executed, and this acknowledgment and the certificate thereof is made in conformity with the laws of the State of Illinois.

Witness my hand and seal this 12th day of July, A. D. 1865.

[L. S.] JOHN A. HUGHES,
N. P. for the Town of Springfield.

REGISTER'S OFFICE, *La Fayette Co., Wis.*

Received for record, July 14th, A. D. 1865, at 3 o'clock p. m., and recorded in vol. 4 of deeds, pages 347 and 348.

F. SCOTT, *Register.*

Eighthly. Said plaintiff further produced and gave in evidence a quit-claim deed from said James Campbell individually to said plaintiff, dated July 12, 1865, recorded in La Fayette county July 14, 1865, of which deed the following is a copy:

40 *Quit-claim deed.—James Campbell to Richard H. McGoon.*

This indenture, made the twelfth day of July, in the year of Lord one thousand eight hundred and sixty-five, between James Campbell, of the county of Sangamon, and State of Illinois, party of the first part, and Richard H. McGoon, of the county of Jo Daviess, and State of Illinois, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released and quit claimed, and by these presents does give, grant, bargain, sell, remise, release, and quit-claim unto the said party of the second part, to his heirs and assigns forever, all those certain pieces, parcels, or tracts of land and real estate lying and being in the county of La Fayette, and State of Wisconsin, known and described as follows, to wit: The east half of

the northeast quarter of section thirty-one, (31;) the southeast quarter and the southwest quarter, both of section thirty-one, (31;) the west half of the northwest quarter of section thirty-two, (32;) the southeast quarter of section thirty-two, (32,) and all that part of the southwest quarter of section thirty-two (32) lying west of
41 a brook running north and south through said quarter section, and about equally dividing it, all of said tract lying and being in township one (1) north of range two (2) east of the fourth principal meridian, and containing seven hundred and twenty acres, be the same more or less.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the has hereunto set his hand and seal the day and year first above written.

[SEAL.] JAMES CAMPBELL.

Signed, sealed, and delivered in the presence of—
WALTER CAMPBELL.
WM. R. BEALL.

[U. S. rev. stamp, cancelled.]

STATE OF ILLINOIS, *County of Sangamon, ss:*

On the 12th day of July, A. D. 1865, came before me, James Campbell, the above-named grantor, and acknowledged the execution of the foregoing deed, freely and voluntarily, for the uses and purposes therein mentioned.

42 [L. S.] JOHN A. HUGHES,
N. P. for the Town of Springfield.

REGISTER'S OFFICE, *La Fayette Co., Wis.*

Received for record, July 14th, A. D. 1865, at 3 o'clock p. m., and recorded in vol. 4 of deeds, page 350.

F. SCOTT, *Register.*

Ninthly. Said plaintiff further produced and gave in evidence a tax deed to La Fayette county, conveying the premises, dated December 29, 1852, recorded December 30th, 1852, of which following is copy:

[Certified copy.]

La Fayette county.—Tax deed.—Clerk of board to La Fayette county.

Rec'd for record Dec. 30th, A. D., at 2 o'clock p. m.

Whereas La Fayette county has deposited in my office of clerk of the board of supervisors a certificate of Edw. D. Roache, collector of taxes for the year 1847, of the county of La Fayette, whereby it

appears that the county of La Fayette did purchase of said Edward D. Roache, collector, the following lands, to wit: The southeast quarter of section thirty-two, town. one, range two, containing forty acres, at a tax sale held by said Edward D. Roache, at Shulls-
43 burg, in said county, on the 14th day of April, A. D. 1849, for the sum of three dollars and 31½ cents, being the amount then due the said county for taxes and charges on said lands for 1847; and whereas it appears from an examination of the records of my office, that said land is now unredeemed from such sale: Now, therefore, know all men by these presents, that in consideration of the said sum of three dollars and 31½ cents, and of the premises, I, Philemon B. Simpson, clerk of the board of supervisors of said county, do hereby grant and convey unto the said county of La Fayette the above-described premises, with all the hereditaments and appurtenances thereunto belonging, to the said county of La Fayette, and its sole use and benefit forever.

In witness whereof I have hereunto set my hand and affixed the seal of said board, at Shullsburg, this 29th day of December, A. D. 1852.

[SEAL.] PHILEMON B. SIMPSON,
Clerk of Board of Supervisors of La Fayette Co., Wis.

Signed, sealed, and delivered in presence of—
GEO. MULKS.
D. W. KYLE.

STATE OF WISCONSIN, *La Fayette County, ss*:

On this 29th day of December, A. D. 1852, before me, came the within-named P. B. Simpson, clerk aforesaid, and acknowledged that he executed the within deed for the uses and purposes therein mentioned.

D. W. KYLE,
Clerk of Circuit Court.

44 STATE OF WISCONSIN, *County of La Fayette, ss*:

I, Thomas C. L. Mackay, register of deeds in and for said county of La Fayette, and State of Wisconsin, do hereby certify that I have carefully compared the foregoing copy with the original tax deed entered and recorded in my office, in book "J" of deeds, on page 73, and that the same is a true, full, and correct transcript of and from the said original record, and of the whole of said original.

In testimony whereof I have hereunto set my hand and affixed my official seal this 31st day of December, A. D. 1864, at the village of Darlington, at my office therein, in said county and State.

(Signed) THOMAS C. L. MACKAY,
Register of Deeds in and for said County of La Fayette and State of Wisconsin.

[U. S. rev. stamp, cancelled.]

Tenthly. Said plaintiff further produced and gave in evidence a certified copy of the resolutions and authority from county board of supervisors of La Fayette county to clerk of said board, authorizing him to convey said land from La Fayette county to plaintiff, of which the following is a copy:

[Certified copy.]

Resolutions of the county board of supervisors.

45 SHULLSBURG, *November 21st*, 1860, *six o'clock p. m.*

Board met pursuant to adjournment. The following resolution was offered and adopted:

Ordered, that the clerk of this board and his successors in office are hereby authorized to sell and convey, by deed of quit-claim and release in the form commonly used and hereby acknowledged, executed and delivered by said clerk, and sealed with the seal of this board, any lands or village lots heretofore, or such as may hereafter be, conveyed to the county for the non-payment of taxes, under any law of this State, until otherwise ordered; provided that the clerk shall in all cases require payment of the lawful amount due the county on lands by him to be sold before the delivering any deed of the same. The purchaser shall also pay his fees for making and executing the deed.

This board also hereby in all things satisfy and confirm all such conveyances heretofore made by the present clerk or by his predecessors in office, and declare them to be as lawful and as much in force as though an order of this kind had been made heretofore.

STATE OF WISCONSIN, *County of La Fayette, ss:*

I, John Collins, clerk of the county board of supervisors of the county of La Fayette, in the State of Wisconsin, do hereby certify
46 that I have carefully compared the foregoing copy with the original record of the resolutions of the county board of supervisors of said county of La Fayette, passed by said board at their November session, A. D. 1860, as entered and recorded in my office, and that the foregoing is a true, full and correct transcript of and from said original record, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in the village of Darlington, this 31st day of December, A. D. 1864.

[L. S.] JOHN COLLINS,
Clerk of the Board of Supervisors of the County of La Fayette, Wisconsin.

[U. S. rev. stamp, cancelled.]

Eleventh. Said plaintiff further produced and gave in evidence a quit-claim deed from La Fayette county, by the clerk of the board of supervisors thereof, to plaintiff, dated December 31, 1863, recorded in same county January 3d, 1865, of which deed the following is a copy:

[Certified copy.]

Quit-claim deed, SE. ¼ of 32, 1, 2.—La Fayette county to Richard H. McGoon.

This indenture, made the 31st day of December, in the year
47 of our Lord one thousand eight hundred and sixty-three, between the county of La Fayette, in the State of Wisconsin, by John Collins, clerk of the board of supervisors, who, as said clerk, is the agent of said county, duly authorized by resolution of said board of supervisors to convey land deeded by said county for the non-payment of taxes, party of the first part, and Richard H. McGoon, of Jo Daviess county, and State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of twenty-six dollars and ninety-three cents, to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, hath remised, released, and quit-claimed, and by these presents do remise, release, and quit-claim unto the said party of the second part, to his heirs and assigns forever, all the following described tract or parcel of land lying and being in the county of La Fayette and State of Wisconsin, to wit:

The southeast quarter of section thirty-two, (32,) in township one, (1) north of range two (2) east of the fourth principal meridian, the said tract of land having been sold to La Fayette county for the taxes due and unpaid for the year A. D. 1847, and deeded to said county for such unpaid taxes by the clerk of the board of supervisors of said county of Lafayette and State of Wisconsin, by deed
48 bearing date December 29th, A. D. 1852, and recorded in book "J," page 73 of deeds, in the register's office in and for said county and State.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever, of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part hath hereunto set his hand officially, and the seal of the board of supervisors of Lafayette county, the day and year first above written.

JOHN COLLIN,
Clerk of the County Board of Supervisors,
La Fayette co., Wisconsin.

Signed, sealed and delivered in presence of—
HENRY S. MAGOON.
A. B. P. WOOD.
[Internal revenue stamp, 50 cts.]

STATE OF WISCONSIN, *County of La Fayette ss:*

On the thirty-first day of December, A. D. 1863, came before me John Collins, the above-named grantor, and to me known to be the in-

dividual and officer aforenamed, and acknowledged that he executed the foregoing deed for and on behalf of La Fayette county,
49 in his official capacity of clerk of the board of supervisors of said county, for the uses and purposes therein mentioned.

[L. S.] HENRY S. MAGOON.
Notary Public, La Fayette County, Wisconsin.

STATE OF WISCONSIN, *County of La Fayette ss*:

I, Francis Scott, register of deeds in and for the county of La Fayette, in the State of Wisconsin, do hereby certify that I have carefully compared the foregoing copy with the original record of the quit-claim deed, as entered and recorded in vol. 4 of deeds, in my office, on pages 77 and 78 of said volume, and that the same is a true, full, and correct transcript of and from said original record, and of the whole of such original record.

In witness whereof I have hereunto set my hand and affixed my official seal at Darlington, in said county and State, this 3rd day of January, A. D. 1865.

[L. S.] FRANCIS SCOTT,
Register of Deeds, La Fayette Co., Wisc.

[U. S. rev. stamp, cancelled.]

50 Twelfth. Here the defendant admitted that he was in possession of the premises at the commencement of this suit; and that the premises were of the value of two thousand five hundred dollars.

Thirteenth. Said plaintiff further produced and gave in evidence the several acts of the legislature of the State of Illinois, incorporating, amending, and finally repealing the charter of that corporation, known as the president, directors, and company of the State Bank of Illinois, of which acts the following are copies:

1. Laws of Illinois, 1835, page 7–14; 59, 70; 67–8:

State Bank of Illinois.

In force Feb. 12, 1835. AN ACT to incorporate the subscribers to the Bank of the State of Illinois.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That a bank of the State of Illinois shall be established, the capital stock whereof shall be one million five hundred thousand dollars, to be divided into shares of one hundred dollars each, one million four hundred thousand dollars of said capital stock to be subscribed by individuals, (and) one hundred thousand shall be reserved, and may be subscribed for by the State of Illinois whenever the legislature thereof may deem it proper to sub-
51 scribe the whole, or such part thereof as the condition of the treasury may justify.

Bank established.

Capital stock $1,500,000.

SEC. 2. The capital stock may hereafter be increased by individual subscriptions to an amount not exceeding one million of dollars, to be subscribed for and taken under the direction of the president and directors of this corporation, in the same manner as herein provided for the subscription to the original capital stock.

May be increased.

SEC. 3. All persons who shall become holders of the capital stock of said bank, pursuant to this act, shall be, and they are hereby, constituted a body corporate, by the name of the president, directors, and company of the State Bank of Illinois, and such corporation shall continue until the first day of January, in the year one thousand eight hundred and sixty, and by that name shall be competent to contract and be contracted with, sue and be sued, plead and be impleaded, answer and be answered unto, defended and be defended in all courts and places, and in all matters whatsoever.

Subscribers to the stock incorporated.

Extent of corporation.

SEC. 4. The said corporation shall have power to carry on the business of banking by discounting bills, notes, and other evidences of debt, by receiving deposits, and making all other contracts, involving the interest or uses of money; by buying or selling gold and silver bullion, foreign coins and bills of exchange, by issuing bills, notes, or other evidences of debt, and by exercising such other incidental powers as shall be necessary to carry on all such business.

Nature of the incorporation.

SEC. 5. The real estate which it shall be lawful for said bank to purchase, hold, and convey, shall be—1st, such as shall be required for its immediate accommodation in the transaction of its business, or such as shall have been
52 mortgaged to it in good faith by way of security for loans previously contracted, or for moneys due; or 3d, such as have been conveyed to it in satisfaction of the debts previously contracted in the course of its dealings; or 4th, such as shall have been purchased at sales upon judgment decrees, or mortgages obtained or made for such debts; and said bank shall not purchase, hold, or convey real estate in (any) other case, or for any other purpose; and all such real estate, not absolutely necessary for the convenient discharge of its business, shall be set up at least once a year at public sale; and if the sum offered therefor shall be sufficient to reimburse the principal and interest of the debt for which it was taken by said corporation, it shall be absolutely sold.

Real estate to be held by said bank.

SEC. 6. The said corporation shall not directly or indirectly deal or trade in buying or selling any goods, wares, or merchandise, or commodities whatever.

Prohibited from dealing in merchandise.

SEC. 7. The said corporation may have and use a common seal; the same alter, break, change, or renew at pleasure, and may also make, ordain, and establish, and put in execution such by-laws, ordinances, rules and regulations, as shall be necessary for the good government of the said bank, and the prudent and efficient management of its affairs. No by-laws, ordinances,

May have a common seal.

rules and regulations of the same shall be anywise contrary to the constitution and laws of this State and of the United States.

Principal bank; where located.

SEC. 8. The principal bank of said corporation shall be located at Springfield, and an office of discount and deposit as a branch thereof shall be established at Vandalia, and the president and directors aforesaid may establish and dis-
53 continue such other offices of discount and deposit as branches within this State whenever the interest of the community or bank require it, in number not exceeding six, for the purpose of discount and deposit, and the transaction of such other business as may be legally confided to them under the provisions of this act; and to commit the management of all the aforesaid branches under such regulations as they shall from time to time deem prudent and necessary to adopt, to such number of persons as they may choose.

Commissioners to receive subscriptions to capital stock.

SEC. 9. For procuring subscriptions for said capital stock, John Tillson, jr., Robert K. McLaughlin, Daniel Wann, A. G. S. Wright, John C. Riley, Wm. H. Davidson, Edward M. Wilson, Edward L. Pierson, Robert R. Green, Ezra Baker, jr., Aquilla Wren, John Taylor, Samuel C. Christie, Edmond Roberts, Benjamin Godfrey, Thomas Mather, A. M. Jenkins, Wm. Lynn, W. S. Gilman, Charles Prentiss, Richard J. Hamilton, A. H. Buckner, Wm. F. Thornton, and Edmund D. Taylor, are appointed commissioners to receive all subscriptions therefor, and said commissioners, or a majority of them, shall first open in this State one or more subscription books for said stock, on such days and at such places as they shall deem expedient; and shall, for such purpose, appoint a day, giving at least thirty days' previous notice of such time and place in one or more of the newspapers printed at the seat of government of this State or elsewhere, and if the whole of the capital stock herein authorized to be subscribed for shall not be taken within twenty days after the books shall be opened as aforesaid, the said commissioners,
or a majority of them, shall open other books on such days
54 and at such places as they shall deem expedient, giving at least twenty days' notice of the time and place of reopening said books, in one or more of the newspapers printed at or near the place of reopening said books.

Length of time for books to be kept open.

SEC. 10. The books for subscription shall be kept open until all the original stock to be subscribed by individuals shall have been taken, and the sum of ten dollars on each share subscribed for shall be paid to the said commissioners at the time of making such subscription; such payment shall be made in specie, bills of the bank of the United States, or certificates of deposit in any of the deposit banks of the United States in New York or Philadelphia. As soon as the directors shall have been chosen, and the commissioners hereby appointed shall have been notified of their election, they shall pay over the whole amount of subscription severally paid to and received by them in the same description of moneys so by them received, into the hands of the president and directors of the said corporation, taking their receipts therefor, to be delivered over to the cashier of said corporation as soon as

he shall have given bond according to law: Provided, That if on closing the books it shall be found that more than one million four hundred thousand dollars have been subscribed, the excess shall be taken first from such as reside out of this State, then from corporations; and should there still be an excess, the same shall be taken in proportion from the subscriptions over one thousand dollars, untill all are reduced to that amount, then from all equally, until the
55 whole amount shall not exceed one million four hundred thousand dollars.

Concerns of said bank, how managed.

SEC. 11. The stock, property, and prudential concerns of said corporation shall be conducted by nine directors, being stockholders and citizens of this State, but no person shall be a director who shall not at the time of his appointment hold at least ten shares of the stock of the incorporation.

Election of directors, when and where to be held.

SEC. 12. The election of directors under this act shall be held at such time and place in the town of Springfield as shall be directed by the said commissioners, who, or a majority of them, are hereby appointed inspectors of the first election, and the persons then elected as directors shall hold their offices until the second Tuesday of June, 1836, and until others are elected.

Shall be elected annually thereafter.

SEC. 13. The directors for every subsequent year, shall be elected [shall be elected] on the second Tuesday of June in every year, at such time of the day, and at such place within the town of Springfield, and under the direction of such persons as a majority of the directors for the time being shall, by a resolution be entered on their minutes, appoint, and shall hold their offices for one year, or until others are elected in their stead.

Number of votes that each stockholder shall be entitled to.

SEC. 14. After the first election, no stockholder who shall not have held his stock for which he votes for three calendar months previous to the day of election shall be entitled to vote, and the uumber of votes to which such stockholder shall be entitled in voting for directors shall be in the proportion following, that is to say, for each and every share, not exceeding four shares, one vote; for every two shares above
56 four and not exceeding thirty, one vote; for every four shares above thirty and not exceeding ninety, one vote; for every six shares above ninety and not exceeding one hundred and fifty, one vote; and for every ten shares above one hundred and fifty, one vote. But no person, partnership, or corporation, shall be entitled to a greater number than one hundred votes. In all elections for directors, votes may be given either in person or by proxy; but no person shall vote by proxy more than one hundred votes, and no individual stockholder who shall be a resident of the county where the election is to be held at the time of such election shall vote by proxy, unless in case of unavoidable absence, except females or minors: Provided, no president, cashier, or other officer of said bank, or branches thereof, shall be permitted to vote at any election for directors as the attorney, agent, or proxy of any stockholder: Provided also, That no president, cashier, or director of the bank shall, during the term of his

office, be eligible to a seat in either branch of the general assembly of this State.

Election to be by ballot.

SEC. 15. All elections shall be by ballot, and the nine persons who shall have the greatest number of votes shall be the directors; and if at any election two or more persons have an equal number of votes for directors, then the directors who shall have been duly elected, shall proceed by ballot, and by plurality of votes determine which of the said persons so having an equal number of votes shall be director, or directors, so as to complete the whole number; and if any director shall cease to be a stockholder to the amount of ten shares, his office shall be vacant; and whenever any vacancy shall happen among the directors, from such or any other cause, such vacancy shall be filled for the remainder of the year in which it shall happen by the directors, for the time being, or a majority of them.

In case two or more have an equal number of votes.

57

Election of president.

SEC. 16. The directors elected, as soon as may be after their election, shall proceed to choose by ballot one of their number to be their president, who shall preside in the board until the next annual election; and in case of his death or resignation, they may proceed to fill the vacancy created thereby for the residue of his term. They shall have power to appoint a cashier, and all subordinate officers of the said corporation, fix their compensation, define their powers, and prescribe their duties, who shall give bonds, and in such penal sums, with such conditions and with such securities as the directors shall prescribe, and hold their several offices during the pleasure of a majority of said directors.

General meeting of stockholders, when held.

SEC. 17. That a general meeting of the stockholders shall be held the second Monday of June, 1836, and on the second Monday of June, annually thereafter, at the time and place of holding the election for directors; and the directors for the year immediately preceding, shall present an exact and particular statement of the state, condition, and affairs of said bank; and the stockholders present shall have power to examine into all matters connected with said bank, its pecuniary concerns and general welfare, and to adopt such measures as shall appear them needful and proper touching the management of said corporation and its effects, as shall not be inconsistent with the provisions of this charter.

58

Authorized to borrow money.

SEC. 18. The said corporation shall have power to receive on deposit or borrow at such rate of interest as may be agreed upon, any sum of money not exceeding one million of dollars, and the same to loan on bond and mortgage of unincumbered real estate within the State; but no loan on such real estate shall be made in any case for more than one-half appraised value thereof, for a term of time not exceeding five years, at no higher rate of interest than ten per centum per annum.

And may loan the same.

When to commence business.

SEC. 19. The said corporation shall not commence business until two hundred and fifty thousand dollars of the capital stock shall have been paid to said corporation in specie, and as soon as such payment shall have been made, the said directors shall notify the governor of this State that they are ready to commence business, and thereupon the said governor shall appoint some suitable person or persons to examine and count the money paid in on account of said capital stock, and then being actually in the vaults or possession of said corporation, whose duty it shall be, at the expense of said corporation, to make such examination, and ascertain by the oath of the president and cashier of the said corporation that the said capital has been bona-fide paid in by the stockholders of said corporation, in payment of instalments under the regulations of this charter, and for no other purpose whatever, and that it has actually been received as part of said capital stock; and thereupon such person or persons, so appointed by the governor, shall forthwith make due return of such examination, and the facts con-
59 nected therewith to the governor, and when the return shall be made to him as aforesaid, that the said sum of two hundred and fifty thousand dollars of the capital stock of the said corporation has been paid in and actually exists in the vaults in possession of said corporation, he shall cause proclamation to be made of the same, which shall be published at the expense of the said corporation, in at least four of the newspapers printed in this State, and on the first publication of such proclamation it shall be lawful for the said corporation to commence business, and not before.

Directors to require payment of sums subscribed and unpaid.

SEC. 20. The directors shall have power to require the stockholders, respectively, to make payment of all sums of money by them subscribed and remaining unpaid, at such times and in such proportion as such directors shall see fit, under the pain of the forfeiture of the share upon which such payments are required, and all previous payments thereon to the said corporation.

Shall give notice of such payments.

SEC. 21. The directors shall give notice of every such call by notice, to be published at least once a week, for eight weeks successively, in two or more newspapers in this State, one of which shall be at the seat of government of this State, which notice so to be published shall be a sufficient call on such stockholders to authorize, in case of default to comply therewith, the forfeiture above provided.

All evidences of debt obligatory on said corporation.

SEC. 22. The obligations, contracts, bills, notes, and other evidences of debt, made or issued by the said corporation, and being assignable and negotiable in like manner as if made or issued by a private person; and those payable to bearer by delivery, and every evidence of debt assigned
60 by the said corporation by endorsement thereon, shall enable the assignee thereof to maintain an action thereupon in his own name; but every note, bill, or evidence of debt purporting to be a bank note to be issued by said corporation, shall be deemed and

taken to be payable at the banking house of the said corporation, unless otherwise specified on its face.

Rates of interest allowed.

SEC. 23. It shall be lawful for said corporation, and they are hereby authorized to demand and receive for all sums of money loaned by them, the following rates of interest, to wit: On loans for sixty days or under, at the rate of six per cent. per annum; on loans over six months and under twelve, eight per cent. per annum: Provided, That the interest may be taken in advance and in accordance with the usual practice of banking institutions.

Notes in circulation not to exceed twice and a half the capital stock.

SEC. 24. The said corporation shall not issue or have in circulation at any time an amount of notes or bills put in circulation as money exceeding twice and a half of its capital stock paid in and possessed, exclusive of the sums due on deposites; nor shall its loans and discounts at any time exceed three times the amount of such stock, exclusive of the deposites as aforesaid; and in case of excess, the directors under whose administration it shall have happened shall be liable in their natural and private capacities. Any director or directors who may be absent when such excess is created or contracted, or who may have dissented from the act whereby the same was created or contracted, may respectively exonerate themselves from being so liable
61 by entering his protest to the same on the book of the minutes of the proceedings of the said corporation.

Refuse to redeem evidence of debt.

SEC. 25. If, at any time, the corporation, hereby created, shall neglect or refuse, for ten days after demand, at the banking house during the regular hours of business, to redeem, in specie, any evidence of debt issued by the said corporation, the said corporation shall discontinue and close all its operations of business, except the securing and collecting of debts due or to become due to the said corporation, and the charter hereby granted shall be forfeited.

Payment demanded and refused.

SEC. 26. The said corporation shall be liable to pay to the holders of every evidence of debt made by it, the payment of which shall have been demanded and refused, damages for the non-payment thereof, in lieu of interest at and after the rate of ten per centum per annum, from the time of such refusal until the payment of such evidence of debt and the damages thereon.

Stock assignable.

SEC. 27. The stock of the said corporations shall be assignable and transferable, according, to such rules as shall be adopted, in that behalf, by the by-laws and ordinances thereof.

When the am't of stock reserved to the State shall be subscribed.

SEC. 28. Whenever the one hundred thousand dollars reserved in this charter to be subscribed for by the State of Illinois shall have been, by virtue of law, subscribed for, and the amount thereof paid in by the said State, the governor shall nominate, and, by and with the advice and consent of the senate, appoint two directors on the part of the State, to represent her in the said corporation, whose rights, powers and duties, shall be,
62 in all respects, the same as those of the directors chosen by the stockholders.

Directors shall make dividends of profits.

SEC. 29. It shall be the duty of the directors of the said corporation to make dividends half-yearly, or otherwise, of so much of the surplus profits arising from the business of the said corporation as they, or a majority of them, shall deem advisable.

Expenses incurred by commissioners, how paid.

SEC. 30. The expenses incurred by commissioners in executing any duties required by this act shall be paid out of the moneys received by them, from the subscribers, out of the capital stock.

SEC. 31. The legislature of this State shall never pass any law retarding, obstructing, staying, protracting or in any wise suspending the collection of any debt or debts due the said bank.

To be deemed a public act.

SEC. 32. This act shall be taken and received by all courts, and by all judges, magistrates, and other public officers, as a public act, and shall be construed liberally for all beneficial purposes therein intended, and all printed copies of the same which shall be printed by or under the authority of the general assembly shall be admitted as good evidence thereof, without any other proof whatever.

Conveyances to to be signed by the president.

SEC. 33. All conveyances of real estate shall be made and signed by the president of this corporation, and shall have affixed to said conveyance the seal thereof.

Shall not issue bills of less than five dollars.

SEC. 34. It shall not be lawful for this corporation, under penalty of the forfeiture of its charter, to issue any bank bills of a less denomination than five dollars: and the power is hereby reserved to the legislature, fifteen 63 years after the passage of this act, should it be considered advisable, to further restrict the corporation from issuing any bank bills of a less denomination than ten dollars.

Stock to be deemed personal property.

SEC. 35. The stock in said bank shall be considered as personal property, and may be sold on execution, and transferred on the books of the bank by the officer selling the same, but in all cases subject to lien in favor of the bank, for all debts bona fide due, or then owing and to become due the same from the owner.

SEC. 36. The said bank shall pay into the State treasury annually, on the first day of January, one-half per cent. on the amount of capital stock actually paid in by individuals, in lieu of all taxes and impositions whatever. Provided, That said bank shall abuse any of its corporate powers by intervening in any of the elections of this State, other than that of its own officers, the said bank and its branches shall forfeit its charter, and cease to exist.

Approved Feb. 12, 1835.

64 In force, Feb. 7, 1835. AN ACT in relation to bank collectors.

Auditors and treasurer authorized to settle with such collectors.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the auditors of public accounts and the treasurer be, and they are hereby, authorized and required to settle the accounts of the several attorneys, justices of the peace, and other colect-

ors of money due to the president and directors of the State Bank of Illinois, and to allow such reasonable charges for contingent expenses as may appear to them proper, and if any balance should be found due to any such attorney, justice of the peace, or other collectors, said auditor and treasurer shall give a certificate of the same, and upon filing such certificate in the auditor's office, the auditor shall draw his warrant on the treasurer, in favor of such attorney, justice of the peace or other collector, for the amount contained in said certificate. If any sum shall appear to be due from any of said attorneys, justices of the peace, or other collectors, and they shall fail to appear and settle their accounts on or before the first day of April next, and pay over such amount as shall be found due from them, then it shall be the duty of said treasurer to direct the attorney general or proper States attorney to commence suit against all such delinquents without delay: Provided, That no money shall be paid out of the State treasury, under the provisions of this act, untill an appropriation shall be made by law.

Collectors failing to pay over money to be sued.

Proviso.

This act to be in force from and after its passage.

Approved Feb. 7, 1835.

65 In force Feb. 14, 1835. **AN ACT for the benefit of bank debtors.**

Interest and part of principal remitted.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That every person indebted to the State Bank (cashiers, purchasers of bank property and collectors, excepted) shall be allowed to pay such debt or debts in three annual installments, and that all interest now due, and twenty-five per cent. of the principal, shall be remitted.

Persons desirous of taking benefit of this act, how to proceed.

SEC. 2. That all persons desirous of taking the benefit of this act shall apply to the treasurer of the State, or any other collector or agent of the said State Bank, and cancel all obligations of indebtedness subsisting between such persons and the bank, by giving their promissory notes, under seal, with approved security, payable as provided in the first section of this act, to the governor of the State, for the use of the people of the State, and all promisory notes or other obligations thus executed shall be in consideration of the forbearance and indulgence herein extended, and no plea to the consideration or the constitutionality of the bank shall be considered valid in law or received in any court before which actions may be brought for the recovery of the debts or obligation hereby created.

Approved Feb. 13, 1835.

66 2. Laws of Illinois, 1837, page 6, 7:

In force 21st July, 1837. **AN ACT to suspend, for a limited time, certain laws in relation to the banks in this State.**

Force of law in regard to banks suspended a limited time.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That every provision of law requiring or authorizing proceedings against any bank in this State with a view to for-

feit its charter, or wind up its concerns, or which requires said bank to suspend its operations and proceedings, in consequence of its refusal to pay its notes or evidence of debt in specie, is hereby suspended until the end of the next general or special session of the general assembly, unless the banks shall have generally resumed specie payment at an earlier date, in which case the governor shall give notice thereof by proclamation, and the said shall within twenty days thereafter, also, resume specie payment: Provided, however, That to secure the benefit of the foregoing provisions, said bank shall agree to conform to, and comply with, the following conditions, restrictions, and limitations, viz:

Duty of governor. Duty of bank to resume specie payment, conditions, restrictions, limitations.

First. That it will not, either directly or indirectly, divide or pay among its stockholders, or any person for them, any dividends, interest, or profits whatever, untill it shall bona fide resume the payment of its notes and evidences of debt in specie, which dividends shall be retained in bank as an additional security to the holders of its notes.

First.

Second. That it will not, directly or indirectly, during the suspension of specie payment, sell, dispose of
67 or part with any of its specie, or gold or silver bullion, except for the purposes of change, to the amount of five dollars or under the sum of five dollars.

Second.

Third. That it will furnish monthly, upon the oath of its president or cashier, to the executive of the State, a full and complete statement of the condition and financial operations of said bank and branches, which shall be published in the newspaper of the State printer.

Third.

Fourth. That it will not directly or indirectly issue or put into circulation, during the period of its suspension of specie payments, any bank bill or note, or any evidence of debt by which the amount of its circulation shall be increased beyond the amount of capital stock actually paid in by the stockholders.

Fourth.

Fifth. That it will receive upon deposit any funds belonging to the State, which may be required to be so deposited, and pay the same out upon the order of its proper officer or agent of the State in kind, free of charge; and also all funds heretofore deposited by the State.

Fifth.

Sixth. That untill the banks shall resume specie payments, citizens and residents of this State who are indebted to them upon notes heretofore discounted shall be allowed to pay their debts in installments, at the rate of ten per cent. upon each and every renewal of the amount originally due, upon condition that such debtors shall execute new notes with satisfactory security, and pay the aforesaid per cent. and the interest in advance, according to the usage and custom of banking.

Sixth.

Provided, That this section shall not apply to notes or bonds assigned or endorsed to the bank.

Proviso.

68 Seventh. That any violation of the provisions of this act, or

Seventh. any failure to comply with and conform to the same, shall subject the bank in default to a forfeiture of its charter.

Duty of president of bank to furnish governor with certificate. Governor shall issue proclamation. SEC. 2. Whenever any bank shall accept the provisions of this act, and the president thereof shall furnish the governor with a certificate of the fact of such acceptance under their corporate seal, the governor shall issue a proclamation, stating the fact of such acceptance, and from and after the date of such proclamation, such bank shall be considered as being entitled to all the benefit hereby confirmed, and bound by all the conditions, restrictions, and limitations herein contained.

Rights of individuals not impaired by this act. SEC. 3. This act shall not be construed so as to impair any rights required by individuals, or to exhonerated the bank from any liability to the holders of its notes for the non-payment of the same; and the provissions of this section shall apply as well to notes heretofore issued as to notes which may hereafter be issued.

Approved 21st July, 1837.

69 3. Laws of Illinois, 1839, page 223-4:

In force Mar. 2, 1839 AN ACT to authorize the governor to appoint bank directors.

Duty of governor to appoint bank directors. SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That it shall be the duty of the governor, by and with the advice and consent of the senate, to appoint at every regular session of the general assembly five directors for the State Bank of Illinois, and nine directors for the Bank of Illinois, whose term of service shall continue for two years, and who shall remain in office untill their successors are appointed and qualified.

To fill vacancies. SEC. 2. The governor of the State shall have power to appoint the directors contemplated by this act, when vacancies may occur by death, resignation, or removal without the limits of this State, and persons thus appointed to fill such vacancies shall severally hold ther offices untill the close of the next session of the general assembly.

Consent of bank to be given. SEC. 3. But before this act shall take effect, the consent of the banks hereunto shall be first given by an entry on their books, made under the direction of the board of directors, which shall be certified under the seal of the corporation to the secretary of state, the same to be by him filed his office.

SEC. 4. Upon the consent of the banks being given to the provissions of the act as herein provided, so much of the act entitled An act to increase the capital of certain banks and to provide means to pay the interest on a loan, authorized by an act to establish and maintain a general system of internal improvements, as provides for the election of five directors to the State Bank of Illinois, and nine directors to the Bank of Illinois by the general assembly, is, and shall thereupon be repealed.

Part of act repealed.

70

Powers of directors.

SEC. 5. The directors herein provided to be appointed by the governor shall have the same power and be subject to the same restrictions as were granted to or imposed upon the directors authorized to be elected by the general assembly under the provissions of the act above mentioned.

SEC. 6. That the governor, during the present session of the general assembly, shall, by and with the advice and consent of the Senate, appoint all the bank directors herein provided to be appointed; but such directors shall not take or hold the office of directors of such bank until the said corporation shall have signified their assent to the provissions of this act, as above provided.

SEC. 7. When the assent of either of said banks shall be certified to the secretary of state, as herein provided, the provision of this act shall be considered as applicable to the bank assenting to the same, whether the others shall agree to the same or not.

Approved March 2, 1839.

71 4. Laws of Illinois, page 15, 16, 17:

In force Jan. 31. 1840. AN ACT in relation to the State Bank, Illinois.

Charter of State Bank revived.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the State Bank of Illinois is hereby revived, and the forfeiture of its charter for refusing to pay for its notes or other evidences of debt in specie is hereby set aside, and said bank is hereby authorized to transact all business as a body corporate in as full and complete a manner as she might have done if said bank had not suspended specie payments; and every provission of law requiring or authorizing proceedings against said bank with a view to forfeit its charter, or wind up its concerns, or which requires said bank to suspend its operations and proceedings in consequence of its refusal to pay its notes and other evidences of debt, in specie, is hereby suspended until the close of the next session of the general assembly of the State of Illinois: Provided, however, That to secure the benefit of the foregoing provisions the said bank shall agree to conform to and comply with the following conditions, restrictions and limitations, to wit:

First. The said bank shall not make any loan on an hypothecation of the stock of the bank.

Second. That it will not, directly or indirectly, during its suspension of specie payments, sell, dispose of, or part with any of its specie, or gold, or silver bullion, except for the purpose of change, to the amount of five dollars or under the sum of five dollars.

Third. That it will furnish monthly to the executive of the State a full and complete statement of the con-

72 dition and financial operations of said bank and its branches, verified by the oath of [the] president or cashier of said bank, which statement shall be published in the newspaper of the public printer.

Seventh. any failure to comply with and conform to the same, shall subject the bank in default to a forfeiture of its charter.

Duty of president of bank to furnish governor with certificate. Governor shall issue proclamation. SEC. 2. Whenever any bank shall accept the provisions of this act, and the president thereof shall furnish the governor with a certificate of the fact of such acceptance under their corporate seal, the governor shall issue a proclamation, stating the fact of such acceptance, and from and after the date of such proclamation, such bank shall be considered as being entitled to all the benefit hereby confirmed, and bound by all the conditions, restrictions, and limitations herein contained.

Rights of individuals not impaired by this act. SEC. 3. This act shall not be construed so as to impair any rights required by individuals, or to exhonerated the bank from any liability to the holders of its notes for the non-payment of the same; and the provissions of this section shall apply as well to notes heretofore issued as to notes which may hereafter be issued.

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To fill vacancies. SEC. 2. The governor of the State shall have power to appoint the directors contemplated by this act, when vacancies may occur by death, resignation, or removal without the limits of this State, and persons thus appointed to fill such vacancies shall severally hold ther offices untill the close of the next session of the general assembly.

Consent of bank to be given. SEC. 3. But before this act shall take effect, the consent of the banks hereunto shall be first given by an entry on their books, made under the direction of the board of directors, which shall be certified under the seal of the corporation to the secretary of state, the same to be by him filed his office.

SEC. 4. Upon the consent of the banks being given to the provissions of the act as herein provided, so much of the act entitled An act to increase the capital of certain banks and to provide means to pay the interest on a loan, authorized by an act to establish and maintain a general system of internal improvements, as provides for the election of five directors to the State Bank of Illinois, and nine directors to the Bank of Illinois by the general assembly, is, and shall thereupon be repealed.

Part of act repealed.

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Powers of directors.

SEC. 5. The directors herein provided to be appointed by the governor shall have the same power and be subject to the same restrictions as were granted to or imposed upon the directors authorized to be elected by the general assembly under the provissions of the act above mentioned.

SEC. 6. That the governor, during the present session of the general assembly, shall, by and with the advice and consent of the Senate, appoint all the bank directors herein provided to be appointed; but such directors shall not take or hold the office of directors of such bank until the said corporation shall have signified their assent to the provissions of this act, as above provided.

SEC. 7. When the assent of either of said banks shall be certified to the secretary of state, as herein provided, the provision of this act shall be considered as applicable to the bank assenting to the same, whether the others shall agree to the same or not.

Approved March 2, 1839.

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In force Jan. 31. 1840. AN ACT in relation to the State Bank, Illinois.

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SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the State Bank of Illinois is hereby revived, and the forfeiture of its charter for refusing to pay for its notes or other evidences of debt in specie is hereby set aside, and said bank is hereby authorized to transact all business as a body corporate in as full and complete a manner as she might have done if said bank had not suspended specie payments; and every provission of law requiring or authorizing proceedings against said bank with a view to forfeit its charter, or wind up its concerns, or which requires said bank to suspend its operations and proceedings in consequence of its refusal to pay its notes and other evidences of debt, in specie, is hereby suspended until the close of the next session of the general assembly of the State of Illinois: Provided, however, That to secure the benefit of the foregoing provisions the said bank shall agree to conform to and comply with the following conditions, restrictions and limitations, to wit:

First. The said bank shall not make any loan on an hypothecation of the stock of the bank.

Second. That it will not, directly or indirectly, during its suspension of specie payments, sell, dispose of, or part with any of its specie, or gold, or silver bullion, except for the purpose of change, to the amount of five dollars or under the sum of five dollars.

Third. That it will furnish monthly to the executive of the State a full and complete statement of the con-

72 dition and financial operations of said bank and its branches, verified by the oath of [the] president or cashier of said bank, which statement shall be published in the newspaper of the public printer.

Seventh.

any failure to comply with and conform to the same, shall subject the bank in default to a forfeiture of its charter.

Duty of president of bank to furnish governor with certificate. Governor shall issue proclamation.

SEC. 2. Whenever any bank shall accept the provisions of this act, and the president thereof shall furnish the governor with a certificate of the fact of such acceptance under their corporate seal, the governor shall issue a proclamation, stating the fact of such acceptance, and from and after the date of such proclamation, such bank shall be considered as being entitled to all the benefit hereby confirmed, and bound by all the conditions, restrictions, and limitations herein contained.

Rights of individuals not impaired by this act.

SEC. 3. This act shall not be construed so as to impair any rights required by individuals, or to exhonerated the bank from any liability to the holders of its notes for the non-payment of the same; and the provissions of this section shall apply as well to notes heretofore issued as to notes which may hereafter be issued.

Approved 21st July, 1837.

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To fill vacancies.

SEC. 2. The governor of the State shall have power to appoint the directors contemplated by this act, when vacancies may occur by death, resignation, or removal without the limits of this State, and persons thus appointed to fill such vacancies shall severally hold ther offices untill the close of the next session of the general assembly.

Consent of bank to be given.

SEC. 3. But before this act shall take effect, the consent of the banks hereunto shall be first given by an entry on their books, made under the direction of the board of directors, which shall be certified under the seal of the corporation to the secretary of state, the same to be by him filed his office.

SEC. 4. Upon the consent of the banks being given to the provissions of the act as herein provided, so much of the act entitled An act to increase the capital of certain banks and to provide means to pay the interest on a loan, authorized by an act to establish and maintain a general system of internal improvements, as provides for the election of five directors to the State Bank of Illinois, and nine directors to the Bank of Illinois by the general assembly, is, and shall thereupon be repealed.

Part of act repealed.

70

Powers of directors.

SEC. 5. The directors herein provided to be appointed by the governor shall have the same power and be subject to the same restrictions as were granted to or imposed upon the directors authorized to be elected by the general assembly under the provissions of the act above mentioned.

SEC. 6. That the governor, during the present session of the general assembly, shall, by and with the advice and consent of the Senate, appoint all the bank directors herein provided to be appointed; but such directors shall not take or hold the office of directors of such bank until the said corporation shall have signified their assent to the provissions of this act, as above provided.

SEC. 7. When the assent of either of said banks shall be certified to the secretary of state, as herein provided, the provision of this act shall be considered as applicable to the bank assenting to the same, whether the others shall agree to the same or not.

Approved March 2, 1839.

71 4. Laws of Illinois, page 15, 16, 17:

In force Jan. 31. 1840. AN ACT in relation to the State Bank, Illinois.

Charter of State Bank revived.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the State Bank of Illinois is hereby revived, and the forfeiture of its charter for refusing to pay for its notes or other evidences of debt in specie is hereby set aside, and said bank is hereby authorized to transact all business as a body corporate in as full and complete a manner as she might have done if said bank had not suspended specie payments; and every provission of law requiring or authorizing proceedings against said bank with a view to forfeit its charter, or wind up its concerns, or which requires said bank to suspend its operations and proceedings in consequence of its refusal to pay its notes and other evidences of debt, in specie, is hereby suspended until the close of the next session of the general assembly of the State of Illinois: Provided, however, That to secure the benefit of the foregoing provisions the said bank shall agree to conform to and comply with the following conditions, restrictions and limitations, to wit:

First. The said bank shall not make any loan on an hypothecation of the stock of the bank.

Second. That it will not, directly or indirectly, during its suspension of specie payments, sell, dispose of, or part with any of its specie, or gold, or silver bullion, except for the purpose of change, to the amount of five dollars or under the sum of five dollars.

Third. That it will furnish monthly to the executive of the State a full and complete statement of the con-

72 dition and financial operations of said bank and its branches, verified by the oath of [the] president or cashier of said bank, which statement shall be published in the newspaper of the public printer.

Fourth. Fourth. That it will not, either directly or indirectly, issue or put into circulation during the period of its suspension of specie payment any bank bill or note, or any evidence of debt by which its circulation will be increased beyond the amount of the capital stock actually paid in.

Fifth. Fifth. That it will receive upon deposit any funds belonging to the State which [which] may be required to be so deposited, and pay the same out upon the order of the proper offices or agent of the State, in kind, free from charge; and also all funds heretofore deposited by the State.

Sixth. Sixth. Hereafter, any stockholder in said bank owning five shares of the stock of said bank shall be qualified to act as director of said bank.

Seventh. Seventh, That until said bank shall resume specie payments, citizens and residents of this State who are indebted to them upon notes heretofore discounted shall be allowed to pay their debts in installments at the rate of ten per cent. upon each and every renewal of the amount originally due, upon condition that such debtors shall execute new notes with satisfactory security and pay the aforesaid per cent. and the interest in advance, according to the uses [usages] and customs of banking: Provided, That this section shall not apply to notes or bonds assigned or endorsed to the bank.

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Eighth. Eighth. That the said bank shall not, after their acceptance of the provisions of this act, suffer any person, firm, or house, to become indebted at any one time to the parent bank, or either of its branches, as principal or maker of any promissory note or notes, in a sum greater than ten thousand dollars. That it shall not suffer any person, firm, or house, to become indebted to the parent bank, or any [either] of its branches as security or endorser on promissory notes in a sum greater than ten thousand dollars; and that it shall not suffer any person, firm, or house, to become indebted to said bank, or either of its branches, as drawer or endorser of bills of exchange in a sum greater than twenty-five thousand dollars. And in case any person, firm, or house, shall, at the time of the acceptance of this act by said bank, be indebted to it in any manner greater than is allowed in the preceding limits, said bank shall proceed to call in said debt by instalments until it shall not exceed the amount allowed by the above provisions.

Ninth. Ninth. That at the next elections for choosing directors of said bank, under the provisions of its charter, not less than three persons, not now directors, shall be chosen directors by the stockholders; and thereafter, at each election, at least two new directors shall be elected.

Tenth. Tenth. After the acceptance of this act, if said bank shall fail to comply with any of the conditions, restrictions, or limitations herein imposed, it shall be liable to be proceeded against as may now be done for a violation of any of the provisions of the original charter of said bank.

74 SEC. 2. The State Bank of Illinois shall, at all time, receive its own bank bills in payment of any demand, debt, or claim due to the bank from any individual or corporation whatever.

Shall receive its own bills.

SEC. 3. Whenever the State Bank accept the provisions of this act, and the president thereof shall file in the office of the secretary of state a certificate of the fact of such acceptance, under the corporate seal of said bank, then from and after the filing such certificate, said bank shall be considered as entitled to the benefits of this act, and shall be bound by all the conditions, restrictions and limitations herein contained.

Acceptance of provisions to be filed with sec. of state.

SEC. 4. This act shall not be construed so as to impair any rights acquired by individuals, or to prevent the holders of its notes and other evidences of debt from bringing and maintaining suits against said bank for any notes or other evidences of debt which they now have or may hereafter hold against it; and the provisions of this section shall apply as well to notes heretofore issued as to notes which may hereafter be issued by said bank.

Rights not impaired.

SEC. 5. The directors of the parent [bank] shall, within six months from the passage of this act, remove from Chicago the branch located at that place, and establish the same at such other place as the bank may deem proper.

Branch at Chicago to be removed within six months.

Approved by the council, January, 31st, 1840.

75 5. Laws of Illinois, 1841, pages 39, 40-1-2:

In force. Feb. 26, 1841.

AN ACT to provide for the payment of certain debts due from the State to banks.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That it shall be the duty of the auditor, treasurer, and secretary of State to make settlement with the Bank of Illinois, in relation to claims and demands which said bank may have against the State for advances heretofore made by the said bank to the use of the State on account of the State House fund, commissions, drafts on account of internal improvements, and other liabilities.

SEC. 2. After the settlement herein provided for, and after the settlement provided for [by] law with the State Bank, it shall be the duty of the auditor to issue his warrant on the treasurer of this State for the payment of whatever balance may be found due to the Bank of Illinois and the State Bank of Illinois, which warrants shall bear interest at the rate of six per centum per annum, payable semi-annually, and reimbursable at the pleasure of the State after the year eighteen hundred and fifty.

Auditor to issue warrant to banks.

Redemption of warrants.

SEC. 3. The warrants hereby authorized to be issued may be made in such sums as may be required

Warrants not less than $10,000.

by the said banks, or either of them, not less than ten thousand dollars; said warrants shall be countersigned by the secretary of State, and shall have the seal of State affixed thereto, the performance of which requisite shall be deemed a good and valid execution of the powers herein granted, and by which the faith of the State of Illinois hereby is declared to be pledged for the reimbursement of the principal and interest due on said warrants.

Faith of State pledged.

76 SEC. 4. It may be lawful for the said banks respectively, upon the sale of said warrants, to guaranty the payment of the interest upon the same, and keep an interest account against the State for such interest advanced as aforesaid, and the faith of the State is hereby pledged irrevocably for the reimbursement of the principal and interest of the liabilities hereby authorized to be created.

Interest account.

Approved, February, 26, 1841.

In force. Feb. 27, 1841. **AN ACT to amend an act entitled An act in relation to the State Bank of Illinois, approved January thirty-first, one thousand eight hundred and forty.**

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that so much of an act entitled, "An act in relation to the State Bank of Illinois," approved January thirty-first, A. D. one thousand eight hundred and forty, as requires that the directors of the parent bank shall, within six months from the passage of said act, remove from Chicago the branch located at that place, and establish the same at such other place as the bank may deem proper, be, and the same is hereby repealed, and the said bank is hereby authorized to relocate said branch at Chicago.

Approved February 27, 1841.

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In force. Feb. 27, 1841. **AN ACT concerning the State Bank of Illinois.**

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the twenty-fifth section of an act entitled "An act to incorporate the subscribers to the bank of the State of Illinois," approved February twelfth, one thousand eight hundred and thirty-five, be and the same is hereby repealed, and any forfeiture which may have accrued under the provisions of said section is hereby set aside: Provided, That when said bank shall resume specie payments for its evidences of indebtedness, if at any time after such resumption the bank shall again suspend such payment for a longer period of time than is now allowed by its charter, then and in such case the general assembly shall have the power to declare said charter forfeited.

25th section repealed.

Proviso.

SEC. 2. The said bank is hereby authorized to receive interest at the rate of seven per centum per annum on all loans or discounts made by said bank, for any period of time not exceeding six months; and for any longer period of time

Interest allowed.

the said bank is authorized to receive interest upon the same at the rate of nine per centum per annum.

Small notes. SEC. 3. The said bank is hereby authorized to issue notes of the denominations of one, two and three dollars, until the first day of January, A. D. one thousand eight hundred and forty-three, but not after that period: Proviso. Provided, however, That this bank, in order to avail herself of the benefits of the foregoing provisions, shall agree to and conform with the following conditions, to wit: First, the said Not dispose of specie. bank shall not, directly or indirectly, during its suspension of specie payments, sell, or in any manner dispose
78 of any of its specie, or gold or silver bullion, except for the purposes of change to the amount of five dollars, or under the sum of five dollars. Second, that it will neither directly nor indirectly issue or put in circulation, during the period of its Notes in circulation. suspension of specie payments, any bank bills, or evidences of indebtedness by which its circulation will be increased beyond the amount of the capital stock actually paid in. Third, that it will receive upon deposit any Shall receive money. funds belonging to the State, which may be required to be so deposited, and pay the same out upon the order of the proper officer or agent of the State, in kind and free of charge. Fourth, that it will purchase of the State six per cent. Purchase bonds. bonds at par, as follows, viz: on the first day of July next, fifty thousand dollars; on the first day of January, one thousand eight hundred and forty-two, fifty thousand dollars; on the first day of July, one thousand eight hundred and forty-two, fifty thousand dollars; and on the first day of January, one thousand eight hundred and forty-three, fifty thousand dollars; and the purchase money of such bonds shall be advanced at the above-mentioned periods by said bank, and apply exclusively to the redemption of bonds heretofore hypothecated by the fund commissioners, and to the payment of interest due on State indebtedness other than to said bank. Fifth, that during the time of the suspension of specie payments by said bank, the citizens of this State who are indebted to it on notes heretofore discounted shall be allowed to pay Per cent. on debts. their debts in installments, at the rate of ten per cent. upon each and every renewal of the amounts now due,
79 upon condition that such debtor shall execute new notes with satisfactory security, and pay the aforesaid per cent. and the interest in advance, according to the usages of banking.

SEC. 4. Hereafter no director of said bank or firm, with which he or the president thereof may have been connected, shall become liable to the institution, either as principal or security, for more than five thousand dollars at any one time.

Acceptance of act. SEC. 5. Whenever said bank shall except the provisions of this act, the president thereof shall file in the office of the secretary of state a certificate of such acceptance, under the corporate seal of said bank, and from the time

of filing such certificate the bank shall be entitled to the benefits of this act, and bound by all conditions herein contained.

Bank of Illinois. SEC. 6. The provisions of the second section of this act shall be applicable to the Bank of Illinois, if within sixty days from the passage of this act she shall, in the manner pointed out in the fifth section of this act, signify her

Acceptance, file bond. acceptance thereof, and the two banks shall also enter into bond with auditors of public accounts for and on behalf of the State, that during their present suspension of specie payments they will not declare any dividends to pri-

Dividends. vate stockholders, but that the same shall be retained in such banks for the use of said private stockholders, and that they will also declare the just and proper dividends on her stock, to the full amount of the same, and the portion

On State stock. thereof due upon the one hundred thousand dollars subscribed for under the act of March second, one thousand eight hundred and thirty-seven, shall be paid over to the treasurer of the State when the same becomes due, and the

80 amount thereof due on account of the bank and internal improvement stock shall be paid over to the fund com-

To fund commissioners. missioner, as the same shall become due; and the said banks shall resume the payment of specie upon their evidences of indebtedness when the banks of the west and southwest shall generally resume the payment of specie for their evi-

When bank shall resume. dences of indebtedness: Provided, That the thirty-first section of an act entitled "An act to incorporate the subscribers to the bank of the State of Illinois," approved February twelfth, one thousand eight hundred and thirty-five, be and the same is hereby, suspended until said bank resumes specie payment.

Bonus. SEC. 7. The said banks shall hereafter pay a bonus of one half of one per cent. per annum upon all bank stock now owned by the State, or hereafter to be owned, to the fund commissioners.

Approved February 27, 1841.

81 6. Laws of Illinois, 1842, page 21:

In force Dec. 22, 1842. AN ACT in relation to the State Bank of Illinois, and Bank of Illinois.

Debts due bank may be paid in same. SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That all debts and demands due by note or otherwise unto the president, directors, and company of the Bank of Illinois, or the State Bank of Illinois, or that hereafter may become due into either of said banks, may, after or before suit brought thereon, be discharged and paid in the notes and bills of said banks respectively to which said debt or demand may be due, whether the same be in possession of the said bank or banks, or assigned or transferred to any corporation, person, or persons. This act to take effect from and after its passage.

Approved December 22, 1842.

82 7. Laws of Illinois, 1842, pages 21 to 26 and 39:

In force Jan. 24, 1843.

AN ACT to diminish the State debt, and to put the State Bank into liquidation.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the governor shall nominate, and by and with the consent of the senate appoint a bank commissioner, who shall be commissioned by the governor, and before entering upon the discharge of his duties shall take and subscribe to the following oath or affirmation, to wit: "I do solemnly swear or affirm that I am not, directly or indirectly, interested in the affairs of the State Bank of Illinois, as a stockholder, as a creditor or as a debtor, and that I will faithfully, justly, and impartially discharge all the duties required of me by law as bank commissioner," and who, under the direction of the governor, shall execute an official bond conditioned for the faithful performance of the duties imposed upon him by this act. Said commissioner shall receive such compensation for services actually performed, not exceeding three dollars per day, as may be allowed by the governor, and shall hold his office for two years, unless sooner removed by the governor for good cause, to be communicated to the next session of the general assembly; and if any such removal shall be made, the governor shall have power to fill the vacancy by an appointment, to endure until the end of the next succeeding session of the general assembly.

Bank com'r appointed.

Com'r to be sworn.

Form of oath.

To give bond.

Compensation of com'r.

Term of office.

Governor may remove com'r for cause and fill vacancy.

SEC. 2. The State Bank of Illinois is hereby required to go 83 into immediate liquidation, and within thirty days after the passage of this act to pay out all its specie at the counter of her principal bank at Springfield, except fifteen thousand dollars on all liabilities to note holders and depositors, whether of the principal bank or branches, and upon all its indebtedness, except to stockholders, and upon the real estate fund, as the same may be presented for payment: Provided, however, That the said bank shall immediately take an account of the specie on hand, and also of the amount immediate liabilities to note holders, depositors, and other such creditors, and shall not pay out more specie to any one creditor than his fair proportion; in other words, the payments in specie aforesaid shall be pro rata amongst the creditors aforesaid; and the said bank is hereby required to make out and deliver certificates, signed by the president and cashier, to each creditor, for the residue of his debt, after deducting the payment in specie from the whole amount, which certificate shall be registered by the commissioner, in a book to be kept by him for that purpose, said certificates to be is-

State Bank to go into liquidation and pay out specie to creditors.

Proviso.

Payment in specie to be pro rata.

Certificates to be issued to creditors for balance to be registered.

Certificates to be receivable for debts due the bank, and for its property.

sued in such sums as will suit the convenience of the creditors of the bank, which certificates shall be received in payment of any debt due the bank, and also in payment for any real or personal estate purchased of the bank, or for the redemption of any land purchased or to be purchased by the bank under execution: Provided, That no certificate shall be issued for a less sum than ten dollars: And it is further provided, That every twelve months after the first dividend and distribution herein provided for, the said bank, or the receivers thereof, hereafter provided for, shall take an account of the liabilities as aforesaid, and pay out pro rata as aforesaid
84 the amount of specie that may be on hand, to the bill and certificate holders of said bank, the indebtedness to stockholders on account thereof excepted: And provided further, That the bank shall not, directly or indirectly, through its officers, agents, or otherwise, purchase any of the certificates issued under the provissions of this act.

Dividend to be declared every twelve months.

Bank not to purchase certificates.

SEC. 3. Said bank is hereby required to go into immediate liquidation upon the passage of this act; it shall not in future discount any note, lend any money, buy or sell any bill of exchange, issue any paper for circulation, or receive any deposits, nor do any other act usually done by banks, except to wind up its affairs, collect and secure debts, and pay the debts of the bank, sell its real and personal estate, issue the certificates for balances provided for in the second section of this act, renew the notes of its debtors from time to time, upon the payment of installments, one-fifth each time, and to sue and be sued, in relation to all its dealing; for which purposes, and for no others whatever, the charter of said bank is continued for the term of four years from the fourth day of March next, and no longer.

Powers which bank shall not exercise.

Powers remaining to bank.

Charter to continue four years.

Creditors of bank to give up their claims before receiving certificates.

SEC. 4. The aforesaid creditors of the said bank shall, before they shall be entitled to the certificates aforesaid, deliver up to the bank all notes and other evidences of debt held by them, and receipt for all judgments and other demands in favor of such creditors against said bank.

Powers of bank com'r.

SEC. 5. The bank commissioner aforesaid shall superintend the proceedings of said bank, and shall act as director on the part of the State; he shall exercise due vigilance over the proceedings of said bank, and for that purpose
85 he shall have free access to the books, papers, vouchers, vaults, and cash of said bank, and shall have power, in prosecuting his inquiries, to administer an oath to the president, directors, cashier, tellers, clerks, and all other persons, and compel them or either of them to testify in relation to said bank, or in relation to any matter or thing touching the proceedings of its officers, effecting the interest of the State, the creditors of the bank, or of the stockholders, and upon the refusal of any of them to be sworn or testify, he shall have power to issue his warrant to any sheriff, and

May examine officers of bank on oath.

May commit persons refusing to testify to jail.

commit such president, cashier, clerk, teller, or other person to the common jail of the county until he or they shall consent to be sworn or testify, as the case may be: Provided, That said commissioner shall be liable to the party aggrieved for any abuse of the powers hereby conferred upon him. If the said commissioner shall, at any time, discover that any dishonest practices are countenanced by said bank, or any of its officers, in the management of its business, or that it is about to violate any provission of law, then the said commissioner shall immediately certify the fact to the chief justice of the Supreme Court, whose duty it shall thereupon be to issue an injunction against said bank, which shall be executed as in other cases, and made returnable to the Circuit Court of Sangamon county, sitting as a court of chancery, and shall be proceeded in as in other cases of chancery, except that the said Circuit Court of Sangamon county, on the chancery side thereof, shall always be and remain open to hear causes arising under this act.

Proviso.

Com'r may apply for on injunction.

Duty of judges to issue an injunction on certificate of com'r.

Circuit Court of Sangamon co. always open to hear said cause.

Effect of injunction.

The injunction to be issued shall absolutely restrain the said bank, and all officers and persons connected with it, from doing any act whatever in relation to the matter enjoined, until the further order of the said court. The judge who issued the injunction shall appoint a day for the hearing of the cause, not exceeding ten days after the date of the writ, and he or any other judge may hold the court for that purpose. No depositions shall be required to be taken, but witnesses may be sworn and their evidence heard in open court. Upon a hearing of the cause, the judge shall have power to alter, modify, or dissolve the injuction, or make it perpetual, and if it should manifestly appear that the creditors or stockholders will defrauded, then the said court shall have power to declare a forfeiture of the charter of said bank.

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Day of hearing.

Testimony, how taken.

Power of the judge at the hearing.

Court may declare charter forfeited.

Effect of forfeiture of charter.

SEC. 6. If the said bank shall forfeit its charter as aforesaid, it shall not thereby forfeit any of its personal effects; its lands shall not revert, nor shall it be released from any liability to its creditors, nor shall any security for the payment of money, either to or from the bank, be annihilated, but the said court or judge shall appoint three honest and capable men to act as receivers of said bank, who, under the direction of the court, shall enter into bond with approved security for the faithful performance of the duties imposed upon them by this act; who shall have the power and perform the duties of receivers, as in other cases, and shall proceed in the management of the affairs of said bank, in collecting and paying its debts, and selling its real estate and other property, according to such rules and regulations, not inconsistent with law, as shall be made by such court or judge in that behalf,

The court may appoint receivers, who shall give bond.

Duties of receivers.

except that the specie shall be paid out pro rata to creditors, and in collecting the debts due the bank, shall renew all notes with security, upon the payment of one-fifth part of the debt by the debtor. The said receiver shall not sell any real or personal property of the bank for less than two-thirds of its appraised value, to be ascertained by the appraisement of three householders upon oath, to be appointed by the judge of the Circuit Court of the county where the property may be situated. All payments to be made by the receivers shall be made pro rata amongst the creditors, who, upon giving up their demands to the receivers, shall receive a certificate for the residue of their claims; which certificate shall be received as is provided in the second section of this act.

Specie to be paid out pro rata and notes received upon payment of one-fifth.

Property not sold for less two-thirds its appraisement.

Payment by receivers to be pro rata.

Bank to file its acceptance of this act in office of the sec. of state.

SEC. 7. The State Bank of Illinois shall, within three days after the passage of this act, by writing, signed by the president and cashier, under the seal of the bank, and to be filed in the office of secretary of state; and the said bank shall, within five days after the passage of this act, deliver to the governor, acting on behalf of the State, an amount of State bonds, scrip and other evidences of debt without interest, equal on their face to the sum of two millions and fifty thousand dollars, reported by the bank as on hand, on the first of December, one thousand eight hundred and forty-two, in which event the governor is hereby authorized on the part of the State to assign to the bank two millions and fifty thousand dollars of bank stock, owned by the State in said bank, and all the interest of the State in the assets of the bank, real personal, and mixed, except so much of the said assets as the State may be entitled to as the holder of fifty thousand dollars of the stock of said bank, in which event, also, the State directors in said bank, except the commissioners aforesaid, shall be withdrawn.

$2,050,000 of State bonds to be delivered to governor by bank in five days.

Bank stock owned by State to be assigned to bank.

State directors withdrawn.

SEC. 8. Said bank in collecting its debts shall not collect more than one-fifth part of the debt due at the passage of this act, at any one time, of any debtor, by note or judgment, who will pay the one-fifth part and all interest and costs, and renew or give his note with good security, to be paid in seven months: Provided, That in case the bank shall become subject to the operation of this act, the bank shall not in any case charge more than six per cent. interest upon the renewal of any bill discounted: And provided also, That the time of renewal and payment shall not be changed except with consent of the debtor, and that the said debtor shall have the privilege of making such payment and renewal in the county where his debt is now payable, and the bank shall appoint agents in the counties in which branches have have been or are now located, for the purpose of carrying this section into effect. In case any debtor of the bank shall obtain a certi-

Debtor may renew notes.

Bank charge but 6 per cent. interest.

Place of payment.

Bank agents appointed.

Surrender of certificates in payment of debts due the banks.

ficate or certificates issued under the provissions of this act, and shall surrender the same to the officers of the bank, or the holder of any note given to the bank for indorsement thereon, the amount of such certificate or certificates shall be endorsed on such note, and the endorsement shall bear interest at the same rate per cent. as was allowed upon the note upon which such endorsement is made.

Real estate appraised and how.

SEC. 9. The real estate of the bank, exce
much thereof as may be necessary to be reser
be appraised by three householders on oath, or a majority
resident in the county where the real estate shall be
89 to be appointed by the governor; and after due notice, and
within six months after the passage of this act, the said real estate shall be offered for sale at public auction, and shall be struck off to the highest bidder, at or above the appraised value thereof: any real estate failing to sell at its appraised value, or an advance thereon as aforesaid, shall be subject to private purchase, and shall be sold whenever thereafter the appraised value shall be offered for the same: Provided,

To be offered for sale at auction but not below appraisement.

Real estate on execution at two-thirds its appraised value.

That no real estate of said bank shall be sold on execution for less than two-thirds of its appraised value, to be ascertained by the appraisal of three householders on oath, or a majority of them, to be appointed by the judge of the Circuit Court, in the county where the estate shall be situated. No

Debtors not garnisheed.

debtor of the bank shall be garnisheed by any holder of certificates authorized to be issued to creditors under the provissions of this act.

State to retain $50,000 stock.

SEC. 10. The State shall continue to own fifty thousand dollars of stock heretofore subscribed in said bank for the purpose of continuing the constitutional existence of the same, to enable it to wind up its affairs, and for no other purpose whatever; and at the expiration of the time by this act allowed to the bank to wind up its affairs, the said bank shall surrender to the governor of the State an amount of bonds or other State indebted-

Disposition made of said stock on the winding up of bank.

ness, or gold and silver coin, equal to the amount of stock authorized to be retained by said bank; and when the same shall be so surrendered, it shall then be the duty of the governor to surrender said fifty thousand dollars of stock to said bank.

Matters of difference between State and bank to be arbitrated.

SEC. 11. All other matters of difference between the State and the bank shall be submitted to arbitration, one of the arbitrators to be appointed by the governor, and another by the bank, and if they two cannot
90 agree, they may chose a third, whose umpirage shall be final; and if the State shall be found indebted to the bank, the gov-

Award, how carried into effect.

ernor is hereby authorized to issue certificate of indebtedness to said bank, under the seal of the State, and if the bank shall be found to be indebted to the State, the debt shall be paid by said bank, by a surrender of State liabilities to the governor to an amount on their face equal to such debt.

87 except that the specie shall be paid out pro rata to creditors, and in collecting the debts due the bank, shall renew all notes with security, upon the payment of one-fifth part of the debt by the debtor. The said receiver shall not sell any real or personal property of the bank for less than two-thirds of its appraised value, to be ascertained by the appraisement of three householders upon oath, to be appointed by the judge of the Circuit Court of the county where the property may be situated. All payments to be made by the receivers shall be made pro rata amongst the creditors, who, upon giving up their demands to the receivers, shall receive a certificate for the residue of their claims; which certificate shall be received as is provided in the second section of this act.

Specie to be paid out pro rata and notes received upon payment of one-fifth.

Property not sold for less two-thirds its appraisement.

Payment by receivers to be pro rata.

Bank to file its acceptance of this act in office of the sec. of state.

SEC. 7. The State Bank of Illinois shall, within three days after the passage of this act, by writing, signed by the president and cashier, under the seal of the bank, and to be filed in the office of secretary of state; and the said bank shall, within five days after the passage of this act, deliver to the governor, acting on behalf of the State, an amount of State bonds, scrip and other evidences of debt without interest, equal on their face to the sum of two millions and fifty thousand dollars, reported by the bank as on hand, on the first of December, one thousand eight hundred and forty-two, in which event the governor is hereby authorized on the part of the State to assign to the bank two millions and fifty thousand dollars of bank stock, owned by the State in said bank, and all the interest of the State in the assets of the bank, real personal, and mixed, except so much of the said assets as the State may be entitled to as the holder of fifty thousand
88 dollars of the stock of said bank, in which event, also, the State directors in said bank, except the commissioners aforesaid, shall be withdrawn.

$2,050,000 of State bonds to be delivered to governor by bank in five days.

Bank stock owned by State to be assigned to bank.

State directors withdrawn.

SEC. 8. Said bank in collecting its debts shall not collect more than one-fifth part of the debt due at the passage of this act, at any one time, of any debtor, by note or judgment, who will pay the one-fifth part and all interest and costs, and renew or give his note with good security, to be paid in seven months: Provided, That in case the bank shall become subject to the operation of this act, the bank shall not in any case charge more than six per cent. interest upon the renewal of any bill discounted: And provided also, That the time of renewal and payment shall not be changed except with consent of the debtor, and that the said debtor shall have the privilege of making such payment and renewal in the county where his debt is now payable, and the bank shall appoint agents in the counties in which branches have have been or are now located, for the purpose of carrying this section into effect. In case any debtor of the bank shall obtain a certi-

Debtor may renew notes.

Bank charge but 6 per cent. interest.

Place of payment.

Bank agents appointed.

Surrender of certificates in payment of debts due the banks.

ficate or certificates issued under the provissions of this act, and shall surrender the same to the officers of the bank, or the holder of any note given to the bank for indorsement thereon, the amount of such certificate or certificates shall be endorsed on such note, and the endorsement shall bear interest at the same rate per cent. as was allowed upon the note upon which such endorsement is made.

Real estate appraised and how.

SEC. 9. The real estate of the bank, excepting so much thereof as may be necessary to be reserved, shall be appraised by three householders on oath, or a majority of them resident in the county where the real estate shall be situated,
89 to be appointed by the governor; and after due notice, and within six months after the passage of this act, the said real estate shall be offered for sale at public auction, and shall be struck off to the highest bidder, at or above the appraised value thereof; any real estate failing to sell at its appraised value, or an advance thereon as aforesaid, shall be subject to private purchase, and shall be sold whenever thereafter the appraised value shall be offered for the same: Provided,

To be offered for sale at auction but not below appraisement.

Real estate on execution at two-thirds its appraised value.

That no real estate of said bank shall be sold on execution for less than two-thirds of its appraised value, to be ascertained by the appraisal of three householders on oath, or a majority of them, to be appointed by the judge of the Circuit Court, in the county where the estate shall be situated. No

Debtors not garnisheed.

debtor of the bank shall be garnisheed by any holder of certificates authorized to be issued to creditors under the provissions of this act.

State to retain $50,000 stock.

SEC. 10. The State shall continue to own fifty thousand dollars of stock heretofore subscribed in said bank for the purpose of continuing the constitutional existence of the same, to enable it to wind up its affairs, and for no other purpose whatever; and at the expiration of the time by this act allowed to the bank to wind up its affairs, the said bank shall surrender to the governor of the State an amount of bonds or other State indebted-

Disposition made of said stock on the winding up of bank.

ness, or gold and silver coin, equal to the amount of stock authorized to be retained by said bank; and when the same shall be so surrendered, it shall then be the duty of the governor to surrender said fifty thousand dollars of stock to said bank.

Matters of difference between State and bank to be arbitrated.

SEC. 11. All other matters of difference between the State and the bank shall be submitted to arbitration, one of the arbitrators to be appointed by the governor, and another by the bank, and if they two cannot
90 agree, they may chose a third, whose umpirage shall be final; and if the State shall be found indebted to the bank, the gov-

Award, how carried into effect.

ernor is hereby authorized to issue certificate of indebtedness to said bank, under the seal of the State, and if the bank shall be found to be indebted to the State, the debt shall be paid by said bank, by a surrender of State liabilities to the governor to an amount on their face equal to such debt.

Branch banks abolished.

SEC. 12. The said bank shall be required to abolish its branches, and the notes issued at said branches shall be payable at the principal bank.

Bonds registered and burned.

SEC. 13. If the bonds, scrip and other evidences of debt heretofore mentioned shall be delivered to the governor in pursuance of this act, he shall cause the same to be registered by their numbers, amounts, and dates, in the office of secretary of state, and shall then produce the same to be destroyed in the presence of the general assembly.

Section 31, of original charter repealed.

SEC. 14. That the thirty-first section of an act to incorporate the subscribers to the Bank of the State of Illinois be and the same is hereby repealed; and hereafter the laws now in force, or hereafter to be in force, regulating the mode of selling property for the collection of debts, shall apply to the debts due to the said bank, the same as to those due to individuals.

No stockholders to receive dividends, until creditors are paid.

SEC. 15. That in no case shall any dividend or dividends be made to any stockholder until depositors, bill holders, and certificate holders shall have been paid.

Form of certificate.

SEC. 16. The certificates to be issued under the provisions of this act shall be in the following form: This certificate, for dollars cents, will at all times be received by 91 the State Bank of Illinois in payment of any debt due the bank, and for any property which the bank may have for sale. It will also entitle the bearer to the proper proportion of all dividends which may be made to the creditors of the bank.

——— ———, *President.*

——— ———, *Cashier.*

Approved January 24th, 1843.

AN ACT to prohibit the reception of depreciated paper in payment of public debts.

Notes of State Bank and Bank of Illinois not receivable in payment of public dues.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That so much of all laws heretofore enacted, and now in force, as makes the notes of the Bank of Illinois, and the branches of said banks, receivable in payment of school, college, and summary debts and interest, and in payment of the State and county revenue of this State, shall be, and the same are, hereby repealed.

Auditor's warrants not to bear interest.

SEC. 2. No warrants, hereafter to be issued by the auditor of public accounts, shall bear interest, but they shall be drawn upon the treasurer of the State, and made payable to the person or persons in whose favor they may be drawn.

SEC. 3. This act to be in force from and after its passage.

Approved February 23rd, 1843.

8. Laws of Illinois, 1845; page 144, 242, 7, 8, 9:

92 AN ACT to amend an act entitled "An act to diminish the State debt, and put the State Bank into liquitation, and to amend an act entitled "An act to reduce the public debt one million of dollars, and to put the Bank of Illinois into liquidation."

In force, March 3, 1845.

Com'r of the Bank of Illinois to be hereafter paid by State Bank of Illinois. Said com'r to be allowed $200 for his services.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That hereafter so much of any law as requires that the State shall pay any sum for any commissioner for the State Bank of Illinois is hereby repealed. The said commissioner shall be allowed for his services the sum of two hundred dollars, to be paid by the said bank. This act to take effect from and after its passage.

Approved March 3, 1845.

In force, Feb. 28, 1945.

AN ACT supplemental to an act to reduce the public debt one million of dollars, and to put the Bank of Illinois into liquidation.

Gov. authorized to receive interest bonds.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the governor of this State shall be, and he is hereby, authorized and required to receive from the Bank of Illinois three hundred and thirty-three interest bonds now in his hands, under a conditional agreement made by him with James Dunlap, president of said bank; and also fifteen thousand dollars of Illinois internal improvement scrip, including interest thereon, which, together with the sum of seventy-three thousand two hundred and sixty dollars, being interest upon said bonds, making nominally the sum of four hundred and twenty-one thousand two hundred and sixty dollars; but which were illegally hypothecated, except the scrip, at the sum of two hundred and five thousand dollars for the whole amount in full for the same; and for which the said governor shall transfer to the said bank the sum of two hundred and five thousand dollars of the stock which the State now holds in said bank.

To receive $15,000 int. imp. scrip.

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Illegally hypothecated.

Gov. to make transfer.

On receipt of securities the State relinquishes, &c.

SEC. 2. On receipt of said securities under the provisions of this act, and its acceptance by said bank herein provided for, the State relinquishes all claim against the bank for damages and interest, under the provissions of the second section of the act to which this is supplementary.

Bank to accept or reject within 30 days. If accepted, the bank to make an assignment.

SEC. 3. The bank shall, within thirty days after the passage of this act, accept or reject the provissions of this act. If the same shall be accepted within that time by said bank, the said bank shall, within thirty days after such acceptance, make an assignment of all the effects of said bank, both real and personal, of every kind and description, to Albert G. Caldwell of Shawneetown, and E. Z. Ryan of Lawrenceville, John J. Hardin of Jacksonville, and Samuel Dunlap of Jacksonville, as follows: All the real estate of said

Real estate to be transfer'd to assignees.

Personal property to whoever transferred. Debts to bank at Jacksonville, to whom assigneed. Assignees to give penal sum bond.

bank to be transferred to all said assignees jointly, and all the personal estate, rights, and credits, and debts of every kind due to said bank at Shawneetown, and branch at Lawrenceville, shall be assigned to the said Albert G. Caldwell and E. Z. Ryan, and all debts due to said bank at Jacksonville, Alton, and Pekin branches, shall be assigned to the said John J. Hardin and Samuel Dunlap; said assignees shall give bond jointly, or severally, or any two together, as they may select and the governor shall require, with security to be approved by the governor, in the penal sum of fifty thousand dollars for each assignee, which bond or
94 bonds shall be conditional for the faithful discharge of the duties of such assignees, and to faithfully account for and pay over all the means and evidences of indebtedness which shall come to his hands as such assignee under the provissions of this act.

Bank to balance of stock to the State within 4 years.

SEC. 4. The balance of $295,000 of State stock in said bank shall be paid by the assignees to the State within four years from the passage of this act in State liabilities, at par, other than the McAllister and Stebbins bonds: Provided, That the debts of the bank shall be first paid, unless on compromise of doubtful debts said assignees may receive State indebtedness, and pay the sum over to the State on said stock; and whenever an amount is so received by the governor, he shall transfer an amount of stock equal to the amount so received, until the whole amount shall be so paid with interest on the stock from the date of the passage of this act, at the rate of six per cent. per annum; should the bank, by its assignees, fail at the end of said term of four years, to make full payment of the balance of said State stock, the bank shall forfeit to the State the sum of twenty thousand dollars in State liabilities, to be paid out of means of said bank, after the payment of all debts presented at the expiration of said term.

Debts of bank first paid.

When State indebtedness may be received.

Should the bank fail to make full payment, &c.

SEC. 5. That after the payment in full of all the liabilities of said bank presented at the end of said term of four years from the passage of this act, should the private stockholders fail to pay the State the full amount of her stock in the same, then the remainder of the assets shall be divided between the State and private stockholders, in proportion to the amount of the stock held by each after the payment to the State of the twenty thousand dollars forfeiture herein provided for.

If the private stockholders fail to pay the full amount of stocks, assets may be divided.

95 SEC. 6. All pro rata payments of specie, required by the act to which this is supplemental, shall be made by the assignees at Shawneetown, and all said assignees shall proceed to wind up the concerns in strict accordance with the provisions of said act; and in renewing notes they shall take the renewed notes payable to themselves as assignees; and when certificates shall be necessary to be issued under said act, they shall be signed one by one of the said assignees to be selected by them.

Pro rata payment of specie.

Renewed notes payable to assignees.

Office of bank com'r repealed.

SEC. 7. That so much of the act to which this is a supplement as provides for the appointment of a bank commissioner of said bank be, and the same is hereby, repealed, and the governor is hereby vested under this act with the power of said commissioner.

Assignees to meet.

SEC. 8. The assignees shall, on the first Monday of November, in each year, meet at Shawneetown, for the purpose of cancelling and burning all notes and certificates redeemed, and making a full report to the governor of the amount of assets in their hands, and of the notes and certificates redeemed and cancelled, and for this purpose three of the said assignees shall constitute a quorum.

To make report.

Three constitute a quorum.

Assignees to collect debts.

SEC. 9. Said assignees shall proceed to collect all debts due to said bank other than stock notes, according to the provisions of the act to which this is a supplement; and the collection of the stock notes shall not be coerced, until the other assets of said bank are exhausted, or the interest of the creditors shall require the same to be collected, and only so much of said stock notes shall be collected as will be sufficient to meet the liabilities of said bank.

How much of stock to be collected.

96 SEC. 10. Said assignees shall be authorized to make conveyances of the real estate belonging to said bank, or hereafter to be received by them in payment of debts, on compromise of any demand due the same in fee simple, but shall not give any covenants or warranty of title in said deed. In any such deed or deeds all said assignees shall join.

All the assignees to join in the execution of deeds.

Assignees authorized to sell real estate.

SEC. 11. Said assignees shall also have power upon giving thirty days' notice in some newspaper to sell real estate of said bank for cash at public sale to the highest bidder, for the purpose of raising funds to pay taxes, clerks, and sherriffs' fees, for the redemption of land sold under execution, and other necessary expenses.

Proceeds of sale; how used.

Int. and costs to be paid, &c.

SEC. 12. Before renewing any indebtedness, the said assignees may require the debtors to pay all interest and costs due and incurred on their debts, and such costs shall be paid in specie or its equivalent.

SEC. 13. Should any of the persons named in this act as assignees die, resign, or refuse to act, the vacancy may be filled by the remaining assignees, and on their failure or refusal so to do, the governor shall fill such vacancy, and such assignee shall give bond and security as is provided by this act, and thereupon all the right, title, and interest in and to all the property, estate, rights, and credits embraced in said assignment, or accruing by virtue thereof, which was vested, or should have vested under the provisions of this act, both in law and equity, shall vest in such assignee or assignees so appointed.

How vacancy filled.

SEC. 14. Said assignees shall be allowed such compensation for their services as may agreed upon at the time of making said
97 assignment, not to exceed eight per cent. on all collections

made by them from debts, or by sales to be retained by them out of the amount raised by collections on sale, and which shall be in full for all services, including attorney's fees, for suits in this State.

Bank officers' pay to cease.

and from and after such assignment, the pay of all the officers of said bank shall cease, except said assignees.

Powers of assignees to collect debts.

SEC. 15. Shall have full power and authority to collect debts due said bank, and make such compromises and settlements as they may deem most advantageous to the said bank: Provided, That no compromise shall be made without the joint action or concurrence of two of said assignees.

Proviso.

If the bank does not accede to the provisions.

SEC. 16. In case said bank shall not accept of the provisions of this act within thirty days after the passage of the same, and make the assignment hereinbefore provided for, then said bank and the funds and means, personal and real assets thereof, shall be put into the hands of receivers, under the provissions of the act to which this is a supplement, by order in writing from the governor to the judge of the third judicial circuit requiring the same to be so done, or by any of the creditors of said bank who shall at the time be a creditor to the amount of fifty thousand dollars.

Mode of appointing receivers.

Assignees allowed 4 years to settle, &c.

SEC. 17. The assignees shall have four years from the passage of this act to make final settlement of the affairs of said bank without hindrance, otherwise than is provided in this act, any law to the contrary notwithstanding. And the debtors of said bank shall be allowed the same term of four years for the payment of all debts due to the said bank, by paying the same in four equal annual installments, with six per cent. interest, to be secured to said bank by four notes with good and approved security, payable in one, two, three, and four years from the date of the assignment to said assignees, on the reception of the assets by said receiver or receivers, as the case may be, whether the debts be due or not, judgment or otherwise.

Debtors allowed 4 years.

Debtors may pay by installments.

98

Notes may be given.

Should bank not accept.

SEC. 18. In the event that the bank shall not accept the provissions of this act, as herein provided, the bonds and scrip in the hands of the governor are to be retained, as herein provided; and the governor in the final settlement of the affairs of said bank shall assign to the bank the amount of two hundred and five thousand dollars, as herein provided.

Gov. to retain bonds.

Gov. to assign, &c.

Officers in making assignment to make triplicate copies.

SEC. 19. The officers of said bank, in making the assignment of the effects, moneys, &c., provided for in this act, shall cause triplicate copies to be executed, one to be retained by themselves, one to be delivered to the assignees, and one to be transmitted to the governor to be filed in the office of the secretary of state, to be filed and preserved by him; also, a tabular statement, under oath, of the debts and credits of said bank. This act to take effect and be in force from and after its passage.

Approved February 28, 1845.

9. Laws of Illinois, 1847, page 20-21:

99 AN ACT for finally closing the affairs of the State Bank of Illinois.

Time extended.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the president, directors, and company of the State Bank of Illinois be, and they are hereby, allowed the use of the charter of said bank until the first day of November, in the year one thousand eight hundred and forty-eight, in addition to the time allowed in the third section of an act of the general assembly entitled "An act to diminish the State debt and to put the State Bank into liquidation. Approved January 24, 1843," for the purpose of winding up the affairs of the said bank; the use of the charter hereby granted being subject to all the conditions, restrictions, and limitations contained in the said third section, and all other portions of the said act, and all acts supplemental thereto.

Trustees to be appointed.

SEC. 2. If the affairs of the said bank shall not be closed before the first day of Novevmber, 1848, the governor shall appoint three trustees, whose duty it shall be to take charge of all the assets of the said bank and wind up its affairs, they being governed in doing so by the provissions of an act entitled An act supplemental to an act to reduce the public debt one million of dollars and to put the Bank Illinois into liquidation, approved the 28th February, 1845, so far as said provissions are applicable.

Bank to file acceptance in secretary of states' office.

SEC. 3. The State Bank of Illinois shall within three days from the passage of this act signify the acceptance of the provissions thereof by a writing signed by the president and cashier, under the seal of the bank, and to be filed in the office of the secretary of state.

100 SEC. 4. That all certificates issued by said bank in pursuance of the provisions of the above-recited act, and all the notes issued by said bank and in the hands of the school commissioners of the several counties in this State, or in the hands of any treasurer of any school district, at the passage of this act, shall, from and after the 4th day of March next, draw interest at the rate of six per cent. per annum until they shall be taken up. And the said bank is hereby required to pay said interest as aforesaid.

Interest on paper of bank.

Duty of school commissioners and treasurers.

SEC. 5. Said school commissioners and treasurers, who shall hold said certificates at the passage of this act, shall, on or before the first day of September next, report to the cashier of the bank at Springfield the date and amount of such certificates, which report shall be verified by the oath of such commissioner or treasurer.

Debtors to bank not to pay interest.

SEC. 6. The debtors to said bank shall not be bound to pay any interest on the debts now due said bank from and after the fourth day of March, instant.

Real estate of bank to be taxed.

SEC. 7. The real estate of said bank shall be liable to taxation and sale on execution in the same manner as the property of individuals.

Approved March 1, 1847.

10. Laws of Illinois, 1849, page 38:

101 **AN ACT authorizing the trustees of the State Bank of Illinois to maintain suits at law.**

Trustees authorized to maintain suits.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the trustees appointed by the governor of the State of Illinois, in pursuance of the second section of the act approved first of March, 1847, entitled "An act for finally closing the affairs of the State Bank of Illinois," and the survivor or survivors of them and their successors in said trust, may, in their own names as such trustees, commence, prosecute, and maintain all suits, either at law or in equity, which may be necessary to collect all or any debt or debts, claims, dues or demands due to the president, directors, or company of said bank, during the existence of its charter, or which may have become due or may hereafter become due to them, as such trustees, and also all actions of every kind which said president, directors, or company of the State Bank of Illinois might have instituted or prosecuted if their charter had continued to exist.

SEC. 2. All suits and actions, either at law or in equity, which were depending in any of the courts in this State at the time the charter of the said bank expired, by the act aforesaid, in which said president, directors, and company of the State Bank of Illinois were parties, either as plaintiffs or defendants, may be revived by or against said trustees, and in their names may be prosecuted to final trial.

Approved February 10, 1849.

102 Fourteenth. Here the plaintiff further produced and gave in evidence the acceptances of the said several acts of the legislature of the State of Illinois, by, and on the part of the corporation. The president, directors, and company of the State Bank of Illinois, and the defendant, by his counsel, admitted that each of the said several acts of the legislature of Illinois had been duly accepted by the bank, its officers, and authorized representatives, in all respects whatever.

Fifteenth. Said plaintiff further produced and gave in evidence official records of the State of Illinois, showing the appointment by Augustus C. French, governor of said State, October 31, 1848, of Nicholas H. Ridgely, Uri Manly, and John Calhoun, the three trustees under and by virtue of the law of said State, passed March 1, 1847, for finally closing the affairs of the State Bank of Illinois. The defendant by his counsel admitted the due appointment by the governor of Illinois, of said three trustees, on October 31, 1848, and that said trustees accepted said trust, and thereafter acted as such; and that on March 21, 1859, John Calhoun, one of said trustees, resigned his position as such trustee; and that James Campbell was appointed trustee in place of said Calhoun, resigned. It was further admitted that in the year 1864 Uri Manly, one of said trustees, died. Further admitted by defendant, that said James Campbell, so appointed trustee, March 31, 1859, had accepted said

trust, and had acted as such trustee since the date of his said appointment, beginning April 1, 1859.

The following are copies of the records of the appointment of said trustees, and of the minutes of the bank relating thereto, so produced and read in evidence by said plaintiff.

NOVEMBER 1st, 1848.

The State Bank of Illinois having failed to comply with the provissions of the act of the legislature in relation to finally closing the affairs of said bank, approved March 1, 1847, the governor this day appointed N. H. Ridgely, Uri Manly, and John Calhoun, esq., trustees, to take charge of the assets of said bank, and close up its affairs, as provided by law.

UNITED STATES OF AMERICA, *State of Illinois, ss:*

I, O. M. Hatch, secretary of state of the State of Illinois, do hereby certify that I have carefully compared the foregoing with the original record on file in my office, of the appointment of the trustees of the State Bank of Illinois, by Augustus C. French, at the time governor of the State of Illinois, and that the foregoing is a true, full and correct transcript of and from said original record, and of the whole of such original. And I do further certify that this certificate and attestation are made in due form, in accordance with the laws of said State of Illinois, and by the proper officer to authenticate the foregoing record.

In testimony whereof I hereunto set my hand and affix the great seal of State at the city of Springfield, this fourth day of January, A. D. 1865.

[SEAL.]

O. M. HATCH,
Secretary of State.

[U. S. rev. stamp, cancelled.]

SPRINGFIELD, *Oct.* 31, 1848.

Thomas Mather, Esq:

SIR: By virtue of a law passed March 1, 1847, providing "for finally closing the affairs of the State Bank of Illinois," I have appointed N. H. Ridgely, Uri Manly, and John Calhoun, esq., the three trustees, contemplated by said law, to wind up the affairs of the bank.

You will therefore please to transfer to them the assets of said bank, with a view of carrying out the purposes of said law.

I am, very respectfully, yours,

AUG. C. FRENCH.

OFFICE TRUSTEES STATE B'K ILLS.,
Springfield, July 3, 1865.

I certify that the above is a true copy of an original document on file in this office; that Thomas Mather was, at the date thereof, the president of the State Bank of Illinois; that I am familliar with

105 the handwriting of Augustus C. French the then governor of the State of Illinois, and that the letter is in his own handwriting.

JAMES CAMPBELL,
A Trustee of State B'k.

STATE OF ILLINOIS, *County of Sangamon, ss*:

I, John A. Hughes, notary public for the town of Springfied, within the county aforesaid, hereby certify that I am familliar with the handwriting of James Campbell, the subscriber to the above, and that the signature thereto is genuine. I further certify that the said James Campbell is a trustee of the State Bank of Illinois.

In witness whereof I hereunto subscribe my name and fix my notarial seal this 13th day of July, A. D. 1865.

JOHN A. HUGHES, *N. P.*

Several words erased on seventh line by me in ink.

JOHN A. HUGHES, *N. P.*

[U. S. rev. stamp, cancelled.]

Extracts from the minutes of the proceedings of the board of directors of the State Bank of Illinois.

On motion, ordered, that the provissions of an act of the general assembly, entitled "An act concerning the State Bank of Illinois, approved 27th February, 1841, be accepted by the bank, and
106 that the bank hereby agrees to conform to and comply with all the conditions of said act, and that the president file in the office of secretary of state a copy of the order, as a certificate of the fact of the provisions of the act above mentioned.

THURSDAY, 26 *January*, 1843.

The following order was unanimously adopted, viz: Ordered, that the provisions of a law of the general assembly entitled "An act to diminish the State debt, and to put the State Bank into liquidation," approved the 24th instant, be accepted by the bank, and that the president and cashier issue the necessary writings of acceptance, under the seal of the bank, as provided for in 7th section of the said act.

MARCH 3RD, 1847.

The following order was unanimously adopted, viz: Ordered, that the provissions of the law of the general assembly entitled "An act for finally closing the affairs of the State Bank of Illinois," approved the 1st instant, be accepted by the bank, and that the president and cashier issue the necessary writing of acceptance under the seal of the bank, as provided for in the 3rd section of said act.

SPRINGFIELD, ILL., *February* 1, 1865.

The undersigned having been cashier of the State Bank of Illinois during its whole existence, hereby certifies that the above are true copies from the minutes of the proceedings of the directors of said bank.

N. H. RIDGELY.

107 *Extract from the minutes of the proceedings of the trustees appointed to wind up the business of the State Bank of Illinois.*

MARCH 31, 1859.

The trustees met at Springfield.

Present: Uri Manly and N. H. Ridgley.

A letter was read from John Calhoun, in which he resigned his office of a trustee of the State Bank.

James Campbell was thereupon appointed trustee in his place, the appointment to date from to-morrow, April 1, 1859.

SPRINGFIELD, ILL., *Feb'y* 1, 1865.

I hereby certify that the above is a true copy from the minutes of the proceeding of the trustees of the State Bank of Illinois.

N. H. RIDGELY.

NEBRASKA CITY, N. T., *March* 21, 1859.

GENTLEMEN: I hereby resign my position as trustee of the State Bank of Illinois, to take effect from and after the first day of April next.

J. CALHOUN, *Trustee, &c.*

N. H. Ridgeley & Uri Manly, esq'rs, trustees of State Bank of Illinois.

Whereas under the provissions of an act of the general assembly of the State, entitled "An act for finally closing the affairs of the State Bank of Illinois," (approved March 1, 1847,) the governor of
108 the State did, on the first day of November, A. D. 1848, appoint John Calhoun, Uri Manly, and Nicholas H. Ridgely, trustees, to take charge of all the assets of the State Bank, and wind up its affairs;

And whereas said John Calhoun has, by a written communication under date of March 21, 1859, addressed to the undersigned, resigned his position of trustee of the State Bank of Illinois, his resignation to take effect from and after the first day of April instant;

And whereas, by virtue of the said act of the general assembly, and of an act entitled "An act supplemental to an act to reduce the public debt one million of dollars, and to put the Bank of Illinois into liquidation," (approved the 20th February, 1845,) the undersigned are authorized to fill the vacancy caused by the said resignation of John Calhoun:

Now, therefore, be it known that we, Uri Manly and Nicholas H. Ridgely, trustees of the State Bank of Illinois, have appointed, and by these presents do appoint, James Campbell, of the city of Springfield, and State of Illinois, a trustee of the said State Bank in the place of the said Calhoun, and to fill the vacancy made by the said resignation.

In evidence whereof we have hereunto subscribed our names the first day of April, A. D. 1859.

URI MANLY.
N. H. RIDGELY.

109 SPRINGFIELD, ILL., *February* 1, 1865.

I hereby certify that the above are true copies of the original papers now in the possession of the trustees of the State Bank of Illinois.

N. H. RIDGELY,
One of the Original Trustees.

MARCH 31ST, 1859.

The trustees met at Springfield.

Present: Uri Manly and N. H. Ridgely.

A letter was read from John Calhoun, in which he resigned his office of trustee of the State Bank.

James Campbell was thereupon appointed trustee in his place, the appointment to date from to-morrow.

APRIL 1ST, 1859.

The above is a true copy from the minutes of the proceedings of the trustees of the State Bank of Illinois.

N. H. RIDGELY, *Trustee, &c.*

[U. S. rev. stamp, cancelled]

STATE OF ILLS., *Sangamon County, ss*:

I, John A. Hughes, a notary public for the town of Springfield, in the county aforesaid, certify that I am familiar with the handwriting of Nicholas H. Ridgely, the subscriber to the above, and that the signature thereto is genuine.

JOHN A. HUGHES, *N. P.*

Witness:
JAMES D. HILLS.

110 Sixteenth. Said plaintiff further produced and gave in evidence the following certified copy of the notice of lis pendens of this action, filed in the register of deeds office of La Fayette county, Wisconsin, March 14, A. D. 1868, and dated March 3rd, 1868.

Certified copy.

R. H. McGOON
vs.
SAM'L H. SCALES. } Lis pendens.

In Circuit Court of United States for district of Wisconsin.

Notice of lis pendens.

RICHARD H. McGOON
vs.
SAM'L H. SCALES.

STATE OF WISCONSIN, *County of La Fayette, ss*:

Notice is hereby given that an action has been commenced and is pending in the court above mentioned, upon the declaration of the

above-named plaintiff, Richard H. McGoon, against the above-named defendant, Samuel H. Scales, to recover the possession of that land and real estate situate and being in the county of La Fayette, and State of Wisconsin, known and described as follows, to wit: the southeast quarter of section thirty-two (32) in township one (1) north of range two (2) east fourth principal meridian, containing one hundred and sixty acres of land, more or less; that said land is the property in said county and State affected by said action of eject-
111 ment, and the object of said action is to eject the said defendant from the possession thereof, and to restore said plaintiff to such possession.

Dated Darlington, Wisconsin, March 3rd, A. D. 1868.

HENRY S. MAGOON,
Plaintiff's Attorney, residence Darlington, Wisconsin.

STATE OF WISCONSIN, *County of La Fayette Register's Office, ss*:

I, T. L. C. Mackay, register of deeds in and for said county, in the State aforesaid, do hereby certify that I have carefully compared the above and foregoing copy of lis pendens with the original thereof now on file in my said office, and that the same is a true and correct transcript therefrom, and of the whole thereof.

Given under my hand and the seal of my said office, at Darlington, in said county, this 6th day of April, A. D. 1868.

[SEAL.] T. L. C. MACKAY, *Register.*

[U. S. rev. stamp, cancelled.]

Filed in my office, March 14th, A. D. 1868, at 10 o'clock a. m., and entered in vol. 2 of lis pendens, on page 19.

T. L. C. MACKAY, *Register.*

And here said plaintiff rested his cause.

112 Thereupon said defendant, to maintain and prove said issue on his part and behalf, produced and offered the following record from the U. S. General Land Office:

GENERAL LAND OFFICE, *March* 11, 1868.

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copies, numbered from 1 to 7, inclusive, are true and literal exemplifications from the record and originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year written.

[L. S.] JOS. S. WILSON,
Commissioner of the General Land Office.

No. 1.

GENERAL LAND OFFICE, *May* 25, 1847.

GENTLEMEN: The following-described entries have been adjudicated under act of 3rd of August, 1846, entitled "An act providing for the adjustment of all suspended pre-emption land claims in
113 the several States and Territorys," and placed in the 2nd class. You will therefore notify the parties interested, in order that they may apply for repayment, viz: Entries No. 483 and 484, the former in name of Peter Perry for the W ½ of the SE ¼, and the latter in the name of Richard Thomas for the E ½ of the SE ¼ of sections 32, t. 1, r. 2, 3, and both assigned to John Atchison, have also been adjudicated and placed in the 2d class, under the act 3rd August last; but Mr. H. H. Gear, of Galena, Ills., has this day been advised that the money will be refunded on proper application &c., and the fact is now communicated to you in order that you may make the proper entries in your books.

I am, gentlemen, very respectfully,
Your ob't servant,
RICHARD M. YOUNG,
Commissioner.

Register and Receiver, Mineral Point, Wisconsin.

No. 2.

No. 483. RECEIVER'S OFFICE, AT MINERAL POINT, M. T.,
Aug. 4, 1835.

Received from Peter Perry, of Iowa county, Mich. Ter'y, the sum of one hundred dollars cents, being in full payment for the west half of the southeast quarter of section No. thirty-two, in township No. one, of range No. two east, containing eighty acres and hundredths, *a* $1 25 per acre.

$100. JAS. ENCIX, *Receiver.*

Pre'n act, 1834.

114 No. 3.

For value received I, Peter Perry, of Iowa county, Mich. Ter'y, do hereby assign, transfer, and set over unto John Atchison, of Jo. Davies co., Mich. Terr'y, all my right, title, claim, and demand to a tract of land purchased by me on the 4th day of August, 1835, as per receiver's receipt No. 483, designated as the west half of the southeast quarter of section numbered thirty-two, in township numbered one, of range numbered two east, situated in the district of lands subject to sale at Mineral Point, Mich. Ter'y, and request that a patent may be issued to said John Atchison, his heirs or assigns.

Witness my hand this 4th day of August, 1835.

PETER PERRY.

Acknowledged before me this 4th day of Aug., 1835.

JAS. P. SHELDON, *Reg'r.*

[Cancelled.]

No. 4.

No. 483. LAND OFFICE, MINERAL POINT,
Aug. 4, 1835.

It is hereby certified that in pursuance Peter Perry, of Iowa county, Ter'y of Michigan, on this day purchased of the register of this office the lot or the west half of the southeast quarter of section No. thirty-two, in townsip No. one, of range No. two east, containing eighty acres, at the rate of one dollar and twenty-five cents per acre, amounting to one hundred dollars and cents, for which the said Peter Perry has made payment in full, as required by law.

Now, therefore, be it it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said Peter Perry shall be entitled to receive a patent for the lot above described.

"Pre-emption act, 1834." JNO. P. SHELDON.

115 Endorsed as follows: Mineral Point, 483. Cancelled. Purchase money ordered to be refunded for treasury warrant report No. 2,408. See letter to R. & R., May 17, 1852. Float to 482. See to Henry S. Magoon, Sept. 9, 1867. Mendenhal.

G. L. O.—Susp. interferes with Legate reservation, but [but] location made prior to date of the reservation. See deposition received in letter of the register, date of 17 March, 1836, showing that the tract was known to be mineral land prior to the entry. Reported as White Oak Springs diggings. The entry rejected. See abstract No. 5, under act of 3rd Aug't, 1846. Register approved by the Secretary of the Treasury and Attorney General. See letter to R. & R. and H. H. Gear, 25th May, '47. G. C. W.

Susp. interferes with Legate's reservation. See also affidavit enclosed in letter of register dated 17th March, 1836.

No. 5.

No. 484. RECEIVER'S OFFICE AT MINERAL POINT, M. T.,
Aug. 4, 1835.

Received from Richard Thomas, of Iowa county, Mich. Ter'y, the sum of one hundred dollars and cents, being in full payment for the east half of the southeast quarter of section No. thirty-two, in township No. one, of range No. two east, containing eighty acres and hundredths, at $1 25 per acre.

$100. JAS. ENCÍX, *Receiver.*

Pre'n Oct. 1834.

116 No. 6.

For value received I, Richard Thomas, of Iowa county, Mich. Ter'y, do hereby transfer, assign, and set over unto John Atchison, of Jo. Davies county, (Ill.,) all my right, title, claim, and demand to

a tract of land purchased by me on the 4th day of August, 1835, as pr. receiver's receipt No. 484, designated as the east half of the southeast quarter of section numbered thirty-two, in township numbered one, of range numbered two east, situate in the district of lands subject to sale at Mineral Point, Mich. Ter'y, and request that a patent therefor may be issued to said John Atchison, his heirs or assigns.

Witness my hand this 4th day of August, 1835.

his
RICHARD × THOMAS.
mark.

Acknowledged before me this 4th day of August, 1835.
JNO. P. SHELDON, *Reg'r.*

[Cancelled.]

No. 7.

484. LAND OFFICE, MINERAL POINT, *Aug.* 4, 1835.

It is hereby certified that in pursuance of law, Richard Thomas, of Iowa county, Ter'y Michigan, on this day purchased of the register of this office the lot or the east half of the southeast quarter of section No. thirty-two, in township No. one, of range No. two east, containing eighty acres, at the rate of one dollar and twenty-five cents per acre, amounting to one hundred dollars and cents, for which the said Richard Thomas has made payment in full, as required by law. Now, therefore, be it known that on present-
117 ation of this certificate to the Commissioner of the General Land Office, the said Richard Thomas shall be entitled to receive a patent for the lot above described.

JNO. P. SHELDON.

"Pre-emption act, 1834."

Endorsed as follows: Mineral Point, 484. Cancelled. Purchase money [money] ordered to be refunded by treasury warrant No. 2,408. See letter to R. & R., May 17, 1852. See to Henry Magoon, Sept. 9, 1867. Mendenhall. Float to 482.

G. L. O.—Susp. interferes with Leg'ts reservation, but location made prior to date of reservation. See depositions received in letter of the register, dated 17 March 1836, showing that the tract was known to mineral land prior to the entry. Reported as White Oak Springs diggings. This entry rejected. See abstract No. 5, under act 3rd Aug't, 1846. Register approved by the Secretary of the Treasury and Attorney General. See letter to R. & R. & H. H. Gear, 25th May, '47. G. C. W.

Susp. interferes with Legates reservation; see also affidavits enclosed in letter of register, dated March 17, 1836.

118 But to the reading of the same in evidence the counsel for the plaintiff did then and there object, because—

First. It is not competent evidence to contradict the patent.

Second. It is no proper record or proof that the original entries of the premises made August 4, 1835, were ever set aside or cancelled.

Third. It is informal, insufficient, and not pertinent to the issue.

Which objections the said judge did then and there severally overrule, and did accordingly decide that the same should be read in evidence on the part of the defendant; to which overruling and decission of said judge said plaintiff's counsel did then and there except.

Said defendant further produced and offered in evidence a record from the U. S. General Land Office, dated March 15, 1865, as follows:

119 GENERAL LAND OFFICE,
March 15, 1865.

I, James M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed is a true extract from the tract books of this office in regard to the SE ¼ sec. 32, T. 1 N., R. 2 E, Mineral Point, Wisconsin.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

J. M. EDMUNDS,
Commissioner of the General Land Office.

Endorsed: No. 445. Richard H. McGoon *vs.* Samuel H. Scales. Extracts from tract books, General Land Office.

Filed April 10, 1865.

REC. 284—5

120 Part of section.	Section.	Township.	Range.	Contents Acres, hundts.	Rate per acre. Dollars, cents.	Purchase money. Dollars, cents.	Name of purchaser.	Number of register's return.	Date of sale.	Number of receipt.	Number of certificate of purchase.	To whom patented.
P. E. SE¼, Oct., 1834.	32	1, N.	2, E.	Cancelled 80	1 25	100	Richard Thomas.	11	4 Aug., 1835.	483	483	John Atchinson. This entry rejected under act 3d August, 1846, and the rejection approved Sec'y of Treasury and Attorney Gen'l. Purchase money ordered to be refunded by Treasury Warrant Report No. 2408. See letter to R. & R., May 17, 1852.
P. E. W½ SE¼, Oct. 1834.	32	1, N.	2, E.	Cancelled 80	1 25	100	Peter Perry.	11	4 Aug., 1865	484	484	John Atchison. This entry rejected under act 3d August, 1846, and the rejection approved by the Sec'y of Tr'y and Attorney General. Purchase ordered to be refunded by Treasury Warrant Report No. 2408. See letter to R. & R., May 17, 1852.
E½.....	32	1, N.	2, E.	160	2 50	400	Hezekiah H. Gear.	.....	3d Nov'r, 1857.	14262	14262	

SE¼ of 32 to be offered on 3d Nov'r 1851.

121 But to the reading of the same in evidence the counsel for the plaintiff did then and there object, because—

First. It is not competent evidence to contradict the patent.

Second. It is no proper record or proof that the original entries, made August 4, 1845, were ever set aside or cancelled.

Third. It is informal, insufficient, and not pertinent to the issue.

Fourth. The record contains no decision adverse to the original entry by any officer or board authorized to cancel the same.

Which objections the said judge did then and there severally overrule, and did then and there decide that the same should be read in evidence on the part of the defendant, to which overruling and decision of said judge said plaintiff's counsel did there and then object.

Said defendant further produced and offered in evidence the following exemplification from the U. S. General Land Office, dated September 1, 1865.

122 Fee paid.

GENERAL LAND OFFICE, *Sept.* 1, 1865.

I, James M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed copy is true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[SEAL.] JAMES M. EDMUNDS,
Commissioner of the General Land Office.

Public sale.

No. 14262. LAND OFFICE AT MI'L POINT, *Nov.* 3.

It is hereby certified that, in pursuance of law, Hezekiah H. Gear, of Jo Davies county, State of Ills., , on this day purchased of the register of this office the lot or southeast of section No. 32, in township No. one, of range No. 2 east, containing one hundred and sixty acres, at the rate of 2 dollar and 50 cents per acre, amounting to four hundred dollars and cents, for which the said Hezekiah H. Gear has made payment in full as required by law.

123 Now therefore be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said Hezekiah H. Gear shall be entitled to receive a patent for the lot above described.

G. H. SLAUGTER, *Register.*

But to the reading of the same in evidence, said plaintiff's counsel did then and there except, because:—

First. It did not tend to impeach or disprove the patent.

Second. It was immaterial to the issue.

Third. It was not sufficeint proof of the date or time of entry, nor that the original entry had been annulled or cancelled.

Which objections the said judge did then and there severally overrule, and decide that the same should be read in evidence on the part of the defendants; to which overruling and decission said plaintiff's counsel did then and there except.

Said defendant further produced and offered in evidence the following certified copy of a deed from John Atchison and wife to
124 Hezekiah H. Gear, dated January 12, 1836:

Iowa county, Book A, page 24-25. This indenture, made this twelfth day of January, in the year of our Lord one thousand eight hundred and thirty-six, by and between John Atchison and Emily C., his wife, of the county of Jo Daviess, in the State of Illinois, of the one part, Hezekiah H. Gear, of the county and State aforesaid of the other part, witnesseth:

La Fayette co., Book A, page 5 and 6. That the said John Atchison and Emily C., his wife, for and in consideration of the just sum of sixteen thousand dollars, to them in hand paid, the receipt whereof they do hereby acknowledge, have given, granted, bargained, sold, released and conveyed, and do by these presents give, grant, bargain, sell, release, convey and confirm unto the said Hezekiah H. Gear and his heirs and assigns forever, all the following described tracts or parcels of land situate and being in the county of Iowa, in the Territory of Michigan, to wit:

All that tract or parcell of land being the southeast quarter of section No. thirty-two, in township No. one north of range No. two east. All that tract or parcel of land being east half of the northeast quarter of section No. thirty-two, in township No. one north of range No. two east. All that tract or parcel [or parcel] of land, being the southwest quarter of section No. thirty-one, in township No. one north of range No. two east. All that tract or parcel of land being the northeast quarter of section No. thirty-one, in township No. one north of range No. two east. All that tract or parcel of land, being one undivided half of the southwest quarter of section No. thirty-two, in township No. one of range No. two east. All that tract of land being the northwest quarter of section No. thirty-two, in township No.
125 one, north of range No. two east, containing in the whole eight hundred acres, be the same more or less. To have and to hold the premises aforesaid, with all the privileges, and appurtenances thereto belonging, or in anywise appertaining unto him the said Hezekiah H. Gear, and unto his heirs and and assigns forever; and the said John Atchison and Emily C. his wife, for themselves and for their heirs, executors and and administrators covenant and promise to and with the said Hezekiah H. Gear, his heirs and assigns, that they, the said John Atchison and Emily C. his wife, are lawfully seized of the premises aforesaid, that they have good right and lawful authority to sell and convey the same in manner aforesaid, and that the premises are free and clear of and from all incumbrances whatever.

And further, that they, the said John Atchison and Emily C. his

wife, will well and truly warrant and defend the premises herein and hereby granted unto the said Hezekiah H. Gear and to his heirs and assigns against the lawful claims and demands of all and every person whomsoever.

In testimony whereof the said John Atchison and Emily C. his wife, party of the first part, have hereunto set their hands and seals the day and year first above written.

[SEAL.] JOHN ATCHISON,
[SEAL.] EMILY C. ATCHISON.

Signed, sealed and delivered in the presence of—
PHILIP P. BRADLEY.
G. P. BELLON.

126 STATE OF ILLINOIS, *Jo Daviess*:

JANUARY 12, 1836.

Then personally appeared before me John Atchison and Emily C. Atchison, to me well known to be the same persons above mentioned, and who have above signed this deed, and acknowledged the foregoing instrument to be their free act and and deed; and the said Emily C. Atchison, being examined separate and apart from her husband, and being fully advised of the contents of the same, acknowledged her signature thereunto to be her own free act and deed.

[L. S.] (Signed) SAM'L SMOKER, JR.

STATE OF WISCONSIN, *County of La Fayette, ss*:

I, Thomas Scott, register of deeds in and for the county of La Fayette, in the State of Wisconsin, do hereby certify that I have carefully compared the foregoing copy with the original record of the deed as entered and recorded in my said office in book "A" of deeds, on pages 5 and 6 thereof, and that the foregoing is a true, full and correct transcript of and from said original record, and of the whole of such original.

In testimony whereof I have hereunto set my hand and official seal, at my office in the village of Darlington, in said county and State, this 24th day of January, A. D. 1865.

[L. S.] FRANCIS SCOTT,
Register of Deeds of La Fayette County, Wisconsin.

[U. S. rev. stamp, cancelled.]

127 Endorsed: John Atchison and wife to H. H. Gear.

But to the reading of the same in evidence said plaintiff's counsel did then and there except, because—

First. That the same is immaterial, and not pertinent to the issue.

Second. Because the deed from Atchison was made and based on an entry from the United States that was in fact cancelled and annulled subsequent to the execution of said deed.

Third. Because of errors and insufficiencies manifest upon the face thereof.

Which objections the said judge did then and there severally overrule and decide that the same should be read in evidence on behalf of the defendant, to which overruling and decission of the said judge said plaintiff's counsel did then and there except.

128 Said defendant further produced and offered in evidence, the following certified copy of a mortgage from Hezekiah H. Gear and wife to the president and directors and company of the State Bank of Illinois, dated November 3, 1838, recorded in La Fayette county, December 9, 1841:

Rec'd December 9th, 1841, at 10 o'clock a. m., and recorded in vol. 1, of mortgages, pages 115, 116, and 117.

This indenture, made at the town of Galena, State of Illinois, on the third day of November, anno Domini one thousand eight hundred and thirty-eight, between Hezekiah H. Gear and Deborah his wife, of the town and State aforesaid, of the first part, and the president, directors and company of the State Bank of Illinois, of the second part witnesseth:

That the said party of the first part, for and in consideration of the sum of one hundred and thirty-five thousand dollars cash to them in hand paid, the receipt whereof is hereby acknowledged and confessed from the aforesaid party of the second part, hath granted, bargained, sold, aliened, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, convey and confirm and release unto the said president, directors and company of the State Bank of Illinois, and to their successor or successors in office, trustees or assigns forever, all those certain lots of land situate and lying within the State of Illinois, and the Territory of Wisconsin, as hereafter described, namely:

129 In the town of Galena, lot number (8) eight, on Main street, containing 3 24-100 of an acre of land, as per receiver's receipt No. 111, dated Galena, 24th April, 1837; which said lot, hereby conveyed, fronts one hundred and fifty-six feet eight inches on Main street, and is bounded on the north by lot No. nine, hereinafter convey ; on the west by Bench street, fronting one hundred and fifty-seven feet ten inches to same; and on the south by an alley dividing said lot number eight from number seven, as is particularly shown by the plat of the town of Galena, duly recorded; a part of the aforesaid lot number eight being conveyed, subject to a ten years' lease from the first day of May last, to the vestry of the protestant episcopal chapel of Galena, and comprises the southwest corner of said lot number eight, fronting forty-nine feet on Bench street by thirty-one feet deep; also lot number nine (9) on Main street, containing 19-100 of an acre of land, as per receiver's receipt number one hundred and ten, dated Galena, 24th April, 1837; which said lot number nine fronts thirty feet on Main street, running through the block of equal breadth to Bench street, bounding also thirty feet on same, as is particularly seen by the plat of the town of Galena before aluded to in this deed and covenant; also lot number fifteen, on Main street, containing 118-1000 of an acre of land, as per receiver's receipt (112)

dated 24th April, 1837; which said lot number fifteen hereby conveyed fronts on Main street, running through the block of equal width to Bench street, bounding also fifty feet on same, as is seen by the plat above alluded to; also lots number eight, (8,) nine, (9,) ten, (10,) eleven, (11,) and twelve, (12,) on Water and Bench streets, containing 1 31-100 of an acre of land, as per receiver's receipt number 165, dated Galena, 4th December, 1837; which said
130 lots comprise a whole block, and are bounded on the north by Gear street; on the east by Main street, fronting three hundred feet to same; on the south by South street, fronting two hundred and ninety-two feet to same; and on the west by Bench street, bounding two hundred and ninety feet thereon, as per plat of the town of Galenaa bove referred to; also lot number seven, (7,) on Water and Bench street, containing 87-1000 of an acre of land, as per receiver's receipt number 236, dated Galena, 28th March, 1838; which lot is of irregular shape, and is situated at the corner of Gear and Main streets, fronting fifty feet to Main street, as per plat aforesaid; also lots nineteen, (19,) twenty, (20,) and twenty-one, (21,) on Bench and Prospect streets, as per receiver's receipt No. 167, dated 4th December, 1837, and recorded plat of Galena aforesaid; also the whole of lots number fifteen, (15,) sixteen, (16,) seventeen, (17,) and eighteen, (18,) on Bench and Prospect streets, as per receiver's receipt No. 167 aforesaid, with the exception of such irregular of said lots 15, 16, 17, and 18, as have been deeded by said Gear to E. B. Kimball, of Galena, as per deed of record, bearing date 10th September, 1838; also lots number ten, (10,) eleven, (11,) twelve, (12,) fourteen, (14,) fifteen, (15,) sixteen, (16,) and seventeen, (17,) in block number (13,) thirteen, situate on South, High, and Prospect streets, as per receiver's receipt number one hudred and sixty-six, dated Galena, 4th December, 1837, and as per plot of the town of Galena; also lot number fourteen, in square number nineteen, per receiver's receipt number 168, dated 25th July, 1838; lot number ten, (10,) in square number fourteen, (14,) per receiver's receipt No. 599, dated 23rd July, 1838; and lot No. (20,) twenty, in square No. nine, (9,) per receiver's receipt No. 434, dated 17th July, 1838.
131 The situation of which lots will fully appear by the reference to the platt of Galena before referred to.

Also, a part of lot number two, on Main and Bench streets, fronting thirty feet to each of said streets, and running the block of equal width; bounded on the south by lot number one on said streets, and on the north by the remainder of said lot number two.

The whole of the foregoing property, hereby conveyed, is situated in the town of Galena and State of Illinois.

Also the following tracts of land, being the same as entered by said Gear at the Mineral Point land office, viz: The south fraction (3) three of southwest quarter of section number nine, (9;) the northeast quarter of the northwest fractional quarter of section nine, (9;) the east half of the southwest quarter, and the southwest quarter of section number four—all of township number , of range number

three west, and situate in the county of Grant and Territory of Wisconsin; also a part of one hundred and sixty of land situate in the county of Iowa, in the Territory of Wisconsin, being the southeast quarter of section number thirty-one, (31,) in township number one, (1,) of range number two east, the same as entered by the said Gear at the Mineral Point land office, on the 10th of February, 1836; also the following described lot of land in the county of Iowa and Territory of Wisconsin, being the same as deeded to the said Gear by John Atchison, of Galena, per deed bearing date 12th January, 1836, and duly recorded at Mineral Point, in book A, pages 24 and 25, to wit, the northwest quarter; the southeast quarter, and the south half of the east half of the northeast quarter of section number thirty-two; the southwest quarter and the northeast quarter of
132 section number thirty-one; and all that part of the southwest quarter of section number thirty-two lying west of a brook running north and south through the same—all in town. one north of range two east; which said tracts of land contain seven hundred and sixty acres, more or less: To have and to the above-described lots of land, together with all and singular the buildings, improvements, privileges, and appurtenances thereunto in anywise belonging or appertaining, unto the said president, directors, and company of the State Bank of Illinois, and to their successors in office, trustees, assigns, or receivers forever; and the said party of the first , for the consideration aforesaid, hereby bind themselves, their executors, administrators, and assigns, to warrant and forever defend the said deeded property unto the said party of the second part, their successors, trustees, receivers, or assigns, from against the claim or demand of them, the said party of the first part, their heirs, executors, administrators, or assigns, and from and against the claim or demand of all persons whatsoever:

Now the condition of this deed and covenants is such that whereas the [the] said Hezekiah H. Gear has executed his five several notes of hand, each bearing date the twenty-seventh day of June, 1838, and each payable to the president, directors, and company of the State Bank of Illinois, at their branch at Galena; one, payable at one year after date, for twenty thousand dollars; one payable at two years after date; one payable at three years after date, and one pay-
133 able at four years after date—each for thirty thousand dollars; and one, payable at ten years after date, for twenty-five thousand dollars; and all payable with interest from their dates, at the rate of six per cent. per annum, payable annually:

Now, if the said Gear shall well and truly pay, at or before maturity unto the said party of the second part his several notes, as above described, and well and truly pay all the interest that may accrue on same, then this deed and covenants, in every part thereof, shall be utterly nul and void; but should said party of the first part fail well and truly in good faith to pay the said described notes, together with all the interest that may accrue thereon, then this deed shall be in full force, virtue, and effect.

In witness whereof the party of the first part have hereunto affixed their hands and seals the day and date first above written.

[The word quarter inserted in this page previous to signing.]

[SEAL.] H. H. GEAR.

[SEAL.] DEBORAH GEAR.

Witness—

H. H. GEAR.

W. S. GILLMAN.

134 STATE OF ILLINOIS, *Jo Daviss County:*

This day personally came before the undersigned, a justice of the peace in and for said county, H. H. Gear, who is personally known to me to be the real person who signed the within instrument of writing or mortgage, and acknowledged that he had signed the same as his free and voluntary act for the uses and purposes therein mentioned; and Deborah Gear, wife of the said H. H. Gear, being by me examined, separate and apart from her said husband, and being by me made acquainted with the contents of the within instrument of writing or mortgage, acknowledged that she had signed the same freely and voluntarily, and without compulsion of her said husband.

Given under my hand and seal this 3rd day of November, A. D. 1838.

[SEAL.] T. A. LIVERMORE.

STATE OF ILLINOIS, *Jo Daviss County, ss:*

I, William H. Bradley, clerk of the County Commissioner's Court in and for said county, do hereby certify that Thomas A. Livermore, whose name appears subscribed to the foregoing certificate of acknowledgment, was at the time of subscribing the same an acting justice of the peace in and for said county, duly commissioned and qualified, and that as such justice full faith and credit are due his official acts.

In testimony whereof I have hereunto set my name and affixed the said court, at Galena, the fourth day of December, A. D. 1841.

Attest [SEAL.] WILLIAM H. BRADLEY, *Clerk.*

135 STATE OF WISCONSIN, *County of La Fayette, ss:*

I, Francis Scott, register of deeds of La Fayette county, in the State of Wisconsin, do hereby certify that I have carefully compared the foregoing transcript with the original record on file and of record in my said office, and that the said transcript is a true, full, and correct transcript from said original record, and of the whole thereof.

In testimony whereof I have hereunto set my hand official seal this 3d day of January, A. D. 1867, at my office in the village of Darlington, in said county and State.

[L. S.] FRANCIS SCOTT,

Register of Deeds in La Fayette County, Wisconsin.

[U. S. rev. stamp, cancelled.]

Endorsed: Hezekiah H. Gear and wife to President, Directors and Company of the State Bank of Illinois. Mortgage.

136 But to the reading of the same in evidence said plaintiff's counsel did then and there object, because—

First. It does not tend to prove the existence of any outstanding title, nor any title in defendant.

Second. Being more than twenty years since due, the presumption is it has been paid and satisfied.

Third. The mortgagors not having any title to the premises at the time of the execution of said mortgage, no covenants therein contained could run with the land.

Fourth. Other errors and insufficiencies in the law manifest upon the face of said instrument.

Which objections the said judge did then and there severally overrule, and decide that the same should be read in evidence on behalf of the defendant, to which overruling and decission said plaintiff's counsel did then and there except.

Said defendant further produced and offered in evidence a certified record of an attachment suit, and proceedings begun in August, 1853, in the La Fayette county Circuit Court, wherein Henry Corwith was plaintiff and State Bank of Illinois was defendant, as follows:

Circuit Court to Oct. term, 1853.

137 STATE OF WISCONSIN, *County of La Fayette, ss*:

To the sheriff of said county, greeting:

The State of Wisconsin hereby commands you that you attach, and you are hereby and thereby commanded to attach the monies, credits, effects, and property lying or being within this State which [which] would belong to the State Bank of Illinois, (a foreign once-existing corporation,) had the same not ceased to exist or act as a body corporate; however the said money, credits, effects and property may be managed, controlled, or held, or so much thereof as will [as will] be sufficient to satisfy the demand of Henry Corwith, to wit, the sum of nine thousand two hundred and eight dollars and thirty-three cents, over and above interest thereon, or upon any part thereof, together with the costs and charges incident to the suit of the said Henry Corwith in this behalf, and also to summon the State Bank of Illinois, if to be found in this State, to appear and answer the said Henry Corwith, plaintiff herein, before the judge of our said Circuit Court in and for said county, at the court-house in the village of Shullsburg, in said county, on the 3rd Monday in the month of October,

A. D. 1853, at 12 o'clock, noon, of said day, in a plea of tres-
138 pass on the case to the damage of the said Henry Corwith, as he saith, of twenty thousand dollars.

Hereof fail not, at your peril, and have with you then and there this writ.

Witness Hon. M. M. Cothren, judge of our said court at Shullsburg, in said county, this 13th day of August, A. D. 1853.

D. W. KYLE, *Clerk*.

Ent. in Gen. Doc. page 516.

D. W. KYLE, *Clerk*.

STATE OF WISCONSIN, *La Fayette County, ss*:

I, Henry Corwith, of lawful age, and of the county of Jo Davies, in the State of Illinois, first being duly sworn, depose and say, that the State Bank of Illinois was a body corporate, and that the same was incorporated by the legislature of Illinois, one of the States of the United States of America, which said corporation once existed, and did business by and under the said corporate name of the "State Bank of Illinois, and that it did so exist and do business for a number of years in the said State of Illinois, under the act creating said body corporate, and under and by virtue of acts amending said act of incorporation, and acts relating to said body corporate and the business of said corporation, all which amendatory acts, and acts relating to said body corporate, and the business thereof, were all
139 passed by the legislature of the said State of Illinois subsequent to the time of the passing of the said act incorporating the said body corporate. And this deponent further saith, that said body corporate was once a foreign corporation as to this State, and was a domestic corporation of said State of Illinois. And this deponent further saith, that said foreign once-existing corporation has ceased to exist and act as a body corporate, and that it has so ceased to act as a body corporate for more than twelve months last past, and that the property, moneys, affairs, and concerns of said body, to wit, the State Bank of Illinois has passed into hands of trustees who now as such trustees manage control, and hold at their disposal the moneys, effects, and property of every kind, whether real, personal, or mixed, belonging or which would belong to said body corporate had the same not ceased to exist or act as a body corporate. And this deponent further saith, that said trustees manage and hold at their disposal as such trustees certain real estates situate in the said county of La Fayette, and in their counties in said State of Wisconsin, belonging or which would belong to said body corporate, to wit: The "State Bank of Illinois" had the same not ceased to exist or act as a body corporate.

And this deponent saith that said trustees were appointed by the governor of said State of Illinois under, pursuant to, and by
140 virtue of a statute law of said State of Illinois, passed by the legislature thereof, and that the number so by said governor appointed was and is three; and this deponent further saith, that he has good reason to believe, and that he doth believe the names of said trustees to be the following; that is to say, Nicholas H. Ridgely, Uri Manly, and John Calhoun, all of whom reside outside of this State and in the said State of Illinois. And I, this deponent, further say, that said foreign once-existing corporation, to wit, "The State Bank of Illinois," is justly indebted to me, upon a demand not sounding in tort, which I have, possess, own, and hold against the said body corporate, so as aforesaid foreign and once existing, and that the said demand, and that the amount of said debt now due me is founded upon express contract, and the same so due and owing to me over and above all legal set offs is nine thousand two hundred and eight dollars and thirty-three cents, over and above interest upon the same or

any part thereof; and this deponent saith, that he has good reason to believe, and that he doth believe, that the said Nicholas H. Ridgely, Uri Manly, and John Calhoun, are now acting in capacity of trustees as aforesaid, and in said State of Illinois residing; and further this deponent saith not.

HENRY CORWITH.

Subscribed and sworn to before me this 13th day of August, A. D. 1853.

D. W. KYLE, *Clerk*.

141 Endorsed: Circuit Court. Henry Corwith *vs.* The State Bank of Illinois. Affidavit filed in the clerk's office of the Circuit Court, this 13th day of August, A. D. 1853. D. W. Kyle, clerk. Filed Jan. 13, 1864. S. F. Kellogg, clerk. J. H. Knowlton, esq., reffr. att'y.

AUGUST 16, 1853.

STATE OF WISCONSIN, *La Fayette County, ss*:

I then and there, by virtue of the within and foregoing writ, and as therein commanded, attached the lands of the State Bank of Illinois therein named lying and being situate in the counties of La Fayette, Iowa, and Grant, in the said State of Wisconsin, and mentioned and described in the schedules hereto annexed, marked Exhibit No. 1 A, Exhibit No. 1 B, and Exhibit No. 1 C. The lands described in Exhibit No. 1 A are situate in the county of La Fayette, and were duly appraised on the oath of freeholders, as appears by the said Exhibit A. Those in Exhibit No. 1 B are situate in the county of Iowa, and were also duly appraised on oath, as appears by said
142 Exhibit B. Those in Exhibit No. 1 C are situate in the county of Grant, and were also duly appraised on oath, as appears by said last-named exhibit. Each of which appraisements were made on the day named in said exhibits, respectively, by freeholders of the county where the lands are situate.

I also deposited in the office of the register of deeds of the county of Lafayette on the sixteenth day of August, 1853, a certified copy of said writ, with an inventory of the property so attached in said county duly described therein, and on the 14th day of August, 1853, I also deposited in the office of the register of deeds, in the county of Iowa, a certified copy of said writ, with an inventory containing a true description of the property so attached in said Iowa county; and I also deposited in the office of the register of deeds of Grant county a certified copy of said writ, with a true inventory and description of the property so attached in Grant county, which I did on the 18th day of August, 1853. I also on the 17th day of August, A. D. 1853, served a copy of said writ and the affidavit thereto affixed, with an inventory of the so as aforesaid attached property, duly certified by me, upon John Bracken, said to be an agent of the said State Bank of Illinois, and residing in the county of Iowa aforesaid. I could

find no other person as commanded by said writ upon whom to serve said writ within this State.

143 So answers

PETER C. MELOY, *Sheriff*.

Attaching property	1 00
Writing inventory	5 00
Summon appraisers	50
Swearing same	50
Appraisers	2 00
Register	25
Travel	10
Iowa county	11 25
Grant	12 25

Endorsed: Circuit Court of La Fayette county, Wis., to Oct. term, A. D. 1853. Henry Corwith vs. State Bank of Illinois. Affidavit and writ of attachment. J. H. Knowlton, esq., pl'ff att'y.

Exhibit No. 1 *A.*

STATE OF WISCONSIN, *La Fayette County, ss*:

You, Thomas James and Jonathan J. Marvin, do each solemnly swear that you are resident freeholders of the county of La Fayette, and State of Wisconsin, and that you will make a true appraisement of the real eatate or lands mentioned and described in the inventory hereto affixed, which lands I have attached by virtue of a writ of attachment to me directed in favor of Henry Corwith, plaintiff, issued out of and under the seal of the circuit for the county of La Fayette, and State of Wisconsin, bearing test the thirteenth day of August, in the year of our Lord one thousand eight hundred and fifty-three. So help you God.

THOMAS JAMES.
JONATHAN J. MARVIN.

Subscribed and sworn to before me this 16th day of August, A. D. 1853.

PETER C. MELOY, *Sheriff*.

144 *Inventory No. 1 B.*

Description.	Sec.	Town	Range.	Acres.	Remarks.
S half of SE qr	10	2	1 E	80	Valued at $200 00
W half of SW qr	22	2	1	80	Do 200 00
W half of NW qr	17	3	1 E	80	Do 200 00
S. P. of S half of NW qr	18	3	1	80	Do 150 00
E half of SW qr	19	3	1	80	Do 200 00
W half of SE qr	28	4	1	80	Do 240 00
SW qr	33	4	1	160	Do 480 00
SW qr	31	1	2	158.68	Do 952 00
E half of NE qr	31	1	2	80	Do 480 00
SE qr	31	1	2	160	Do 960 00
W half of NW qr	32	1	2	80	Do 480 00
Pt of E half of NW qr North of Gears' addition to White-Oak Springs.	32	1	2		Valued at $8 per acre.
Pt of E half of NW qr South of Gears' addition, &c.	32	1	2	22	Valued at 132 00
Pt of D	32	1	2		Valued at $6 per acre.
SE qr of NE qr	32	1	2	40	Do 240 00
All of SW qr West of brook running north and south through the quarter.	32	1	2	80	Do 80 00
Und half of W half of NE qr.	2	2	2	43.51	Valued at 55 00
Und third of E half of SW qr, and SW half of SW qr	9	3	2	40	Do 100 00
Fraction 2-7	7	2	4	12.25	Do 30 64
Do 1	33	2	4	45.42	Do 226 10
E half of NW qr	33	2	4	80	Do 400 00
NE frac 4 of SW qr	33	2	4		At $5 per acre.
& W fr 5 of SE qr	33	2	4	92 36	Valued at 461 80
E half of SW qr	31	3	4	80	Do 240 00
Und third of E half NE qr	5	2	5	26 67	Do 53 34
Und third of W half of NE qr	8	2	5	26.67	Do 53 34
Und third of W half of NW qr	9	2	5	26.67	Do 53 34
W half of SE qr	26	2	5	80	Do 200 00
E half of SE qr	31	2	5	80	Do 240 00
W half of SE qr	31	2	5	80	Do 240 00
E half of SE qr	32	2	5	80	Do 240 00
W half of SW qr	32	2	5	80	Do 240 00
145 E half of NW qr	35	2	5	80	Do 240 00
Und half of NE qr	35	2	5	80	Do 240 00
W half of SE qr	36	2	5	80	Do 240 00
Und half of W half of SW qr.	29	2	5	40	Do 80 00
Und half of NW qr	33	4	5	80	Do 120 00
Und half of NW qr	33	4	5	80	Do 120 00
Und half of E half of NE qr.	33	4	5	40	Do 60 00
NW qr of NE qr	33	4	5	40	Do 60 00
E half of SE qr	21	2	1	80	Do 160 00
N half of NW qr	27	2	1	80	Do 160 00
E half of NE qr	32	1	2	80	Do 280 00
W half of SE qr	32	1	2	80	Do 480 00
SE qr of NE qr					

STATE OF WISCONSIN, *La Fayette County, ss:*

We, the undersigned, resident freeholders of the county of La Fayette, in the State of Wisconsin, having been appointed by Peter C. Meloy, sheriff of the county of La Fayette, and State of Wisconsin, to make a true appraisement of the real estate mentioned and described in the foregoing inventory and schedule marked No. 1 B, and we having been duly sworn to make such appraisement, do upon oath appraise the said lands at the sum or sums set opposite the description of said tracts respectively, as contained in said inventory, to all which we certify this 16th day of August, A. D. 1858.

THOMAS JAMES,
JONATHAN J. MARVIN,
Appraiser.

Appraiser's fees, 1 00 each.

Exhibit No. 1 *C.*

146 STATE OF WISCONSIN, *Grant County, ss:*

You, Andrew Barnett, and Wood R. Beach, do each solemnly swear that you are resident freeholders of the county of Grant and State of Wisconsin, and that you will make a true appraisement of the real estate or lands mentioned and described in the inventory hereto affixed, which lands I have attached, by virtue of a writ of attachment to me directed, in favor of Henry Corwith, plaintiff, issued out of and under the seal of Circuit Court for the county of La Fayette and State of Wisconsin, bearing teste the thirteenth day of August, in the year of our Lord one thousand eight hundred and fifty-three. So help you God.

ANDREW BARNETT.
WOOD R. BEACH.

Subscribed and sworn to before me this 18th day of August, A. D. 1853.

PETER MELOY, *Sheriff.*

147 *Inventory No. 3 B.*

Description.	Sec.	Town.	Range.	Acres.	Remarks.
E half of SE qr	13	2	1 N	80	$200 00
E half of SW qr					120 00
SW qr of NE qr	26	4	1	120	60 00
W half of NE qr	5	1	2	77.66	200 00
W half of SE qr	5	1	2	80	200 00
E half of SW qr	5	1	2	80	200 00
Und half of NW qr	29	2	2	80	160 00
Und half of E half of NE qr	30	2	2	40	80 00
E half of SE qr	34	2	2	80	200 00
E half of SW qr	34	2	2	80	200 00
W half of SW qr	17	8	2	80	160 00
NW qr	19	8	2	159.45	320 00
SE qr of SW qr	4	2	3	40	160 00
SE qr	4	2	3	160	1.500 00
E half of SW qr	4	2	3	80	500 00
NE qr of NW lot 4	9	2	3	40	200 00
S fr of NW qr	9	2	3	40.77	200 00
NW qr	32	3	3	160	400 00
SE qr	33	3	3	159.81	400 00
W half of SE qr	13	8	5	80	160 00
SW qr	11	3	5	160	240 00
Und third of N half, and W half of SW qr	17	3	5	133.33	760 00
					6.560 00

148 STATE OF WISCONSIN, *Grant County, ss:*

We, the undersigned, resident freeholders of the county of Grant, in the State of Wisconsin, having been appointed by Peter C. Meloy, sheriff of the county of La Fayette, and State of Wisconsin, to make a true appraisal of the real estate mentioned and described in the foregoing inventory and schedule marked No. 3 B; and we having been duly sworn to make such appraisement, do upon oath appraise the said lands at the sum or sums set opposite the description of the said tracts respectively, as contained in said inventory, to all which we certify this 16th day of August, A. D. 1853.

ANDREW BARNETT,
W. R. BEACH,
Appraisers.

Attest,

PETER C. MELOY, *Sheriff.*

149 *Exhibit No. 1 B.*

STATE OF WISCONSIN, *Iowa County, ss:*

You, Amzi W. Comfort and John B. Terry, do each solemnly swear that you are resident freeholders of the county of Iowa, and State of Wisconsin, and that you will make a true appraisement of the real estate or lands mentioned and described in the inventory

hereto affixed, which lands I have attached by virtue of a writ of attachment to me directed in favor of Henry Corwith, plaintiff, issued out of and under the seal of the Circuit Court for the county of La Fayette, and State of Wisconsin, bearing teste the thirteenth day of August, in the year of our Lord one thousand eight hundred and fifty-three. So help you God.

AMZI W. COMFORT.
J. B. TERRY.

Subscribed and sworn to before me the 17th day of August, A. D. 1852.

PETER C. MELOY, *Sheriff.*

150 *Inventory No. 2 B.*

Description.	Sec.	Town.	Range,	Acres.	
E half of NE qr	2	4	1 E	75.86	157.72
W half of NW qr	2	4	1	77.44	154.82
Und. qr of W half NE qr	34	5	1	20	Except ¼ p'r ct. in dollars. Town lots. 300.00
W half of SW qr.	17	6	1	80	160.00
E half of SW qr	17	6	1	80	160.00
E half of NW qr	20	6	1	80	200.00
W half of NW qr	20	6	1	80	200.00
W half of SE qr	30	7	1	80	160.00
E half of SW qr	30	7	1	80	160.00
E half of SE qr	31	7	1	80	200.00
W half of SE qr	31	7	1	80	400.00
W half of SW qr	32	7	1	80	240.00
Und. qr of SE qr and E half of SW qr	8	8	1	120	360.00
" half of NE qr and E half of NW qr	17	8	6	120	360.00
E half of SE qr	10	4	2	80	240.00
NW qr	14	4	2	160	480.00
W half of NE qr and E half of SW qr	35	5	2	120	360.00
NW qr	30	6	4	140.99	422.97
Total appraisement					4,709.51

J. B. TERRY,
A. W. COMFORT,
Appraisers.

Attest,

PETER C. MELOY, *Sheriff.*

151 STATE OF WISCONSIN, *Iowa County, ss:*

We, the undersigned, resident freeholders of the county of Iowa, in the State of Wisconsin, having been appointed by Peter C. Meloy, sheriff of the county of La Fayette, and State of Wisconsin, to make a true appraisement of the real estate mentioned and described in

the foregoing inventory and schedule marked No. 2 B; and we having been duly sworn to make such appraisement, do upon oath appraise the said lands at the sum or sums set opposite the description of said tracts respectively, as contained in said inventory; to all of which we certify this 17th day of August, A. D. 1853.

J. B. TERRY,
A. W. COMFORT,
Appraisers.

Attest:

PETER C. MELOY, *Sherriff.*

Endorsed: Circuit Court. Henry Corwith *vs.* The State Bank of Illinois. Affidavit. Filed in open court Oct. 17th, 1853. D. W. Kyle, clerk. J. H. Knowlton, pl'ff's att'y.

152 Circuit Court, to April term, 1854.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS. } Assumpsit.

STATE OF WISCONSIN, *La Fayette County*:

The said defendent, the State Bank of Illinois, created a corporation by and under the laws of the State of Illinois, was summoned to answer Henry Corwith, the said plaintiff, in a plea of trespsss on the case. and therefore comes the said plaintiff, by his attorneys, James H. Knowlton and Charles Dunn, and complains of the said defendent in a plea of trespass on the case, that whereas heretofore, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and fifty-three, at Springfield, in Illinois, to wit, at Shullsburg, in the county of La Fayette, and State of Wisconsin, the said defendent was indebted to the said plaintiff in the sum of twenty thousand dollars, lawful money of the United States of America, before that time lent and advanced to and paid out and expended for the said defendant, and at its special instance and request, and also in the further sum of twenty thousand dollars for other money by the said defendent before that time had and received, to and for the use of the said plaintiff, and the said defendent being so indebted, and the said several sums of money being and remaining wholly due and owing, unpaid and unsatisfied, the said defendent being so
153 indebted, thereof afterward, to wit, on the day and year and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money, in this court mentioned, when the said defendent should be thereunto afterward requested; and whereas, also, the said defendent afterward, to wit, on the day and year and at the place last aforesaid, accounted with the said plaintiff of and concerning divers other sums of money before that time due and owing from said defendent to the said plaintiff, and then and there being in arrears and unpaid.

And upon such accounting the said defendent then and there was

found to be in arrears, and indebted to the said plaintiff in the further sum of twenty thousand dollars of like lawful money as aforesaid; and being so found in arrears and indebted to the said plaintiff, the said defendent, in consideration thereoff, afterward, to wit, on the same day and year, and at the place last aforesaid, undertook, and then and there thus faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendent should be thereunto afterward requested; and whereas, also, the said defendant afterward, to wit, on the same day and year, and at the place last aforesaid, was indebted to the said plaintiff in the further sum of twenty thousand dollars, like lawful money as aforesaid, for so much money
154 before that time and then due and payable from said defendent for interest upon and for the forbearance of divers larger sums of money before then lent and advanced by the said plaintiff to the said defendant, and at its request; and being so indebted, the said defendant, in consideration thereof, afterward, to wit, on the same day and year, and at the place last aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last and in this count mentioned, when the said defendent should be thereunto afterward requested. Nevertheless, the said defendent (although afterward requested, &c.) hath not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereoff, to this said plaintiff; but to pay the same or any part thereoff to the said plaintiff, the said defendent hath hitherto altogether refused, and still doth refuse, to the damage of the said plaintiff of twenty thousand dollars, and therefore the said plaintiff brings suit.

JAMES H. KNOWLTON & CHARLES DUNN,
Att'ys for Plaintiff.

155 Circuit Court, to April term, 1854.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS. } Assumpsit.

STATE OF WISCONSIN, *La Fayette County, ss*:

The following bill of particulars (of which this is a part) exhibits the number of the certificates, evidences of indebtedness, which the plaintiff will offer in evidence, and, to maintain his action, will insist upon on the trial of the cause above entitled; and it also exhibits the date, to whom and the amount payable, as also the amount that has been, as a dividend, paid on each, with the date of such payment, the form of which evidence is to the effect following, to wit:

50 50 50

This certificate, for fifty dollars, will be received at all times by the State Bank of Illinois, in payment of any debts due the bank, and

for any property which the bank may have for sale. It will also entitle the bearer to the proper proportion of all dividends which may be made to the creditors of the bank.

Springfield, February 10th, 1843.

T. MATHER, *Pres't.*
N. H. RIDGELEY, *Cash.*

Fifty. Fifty.

Endorsed: W. H. Purple, com'r. Dividend 16⅔ per ct. Paid 15 August, 1851.

156 *Bill of particulars.—Indebtedness of State Bank of Illinois.*

Number.	Date.	Payable to—	Amount.	
A 6247	Feb'y 10th, 1843	Bearer	50 00	16⅔ pr. ct., end's'd Aug. 15, 1851.
644	do	do	50 00	Do
6246	do	do	50 00	Do
5024	do	do	50 00	Do
2347	do	do	50 00	Do
1094	do	do	50 00	Do
1095	do	do	50 00	Do
3988	do	do	50 00	Do
3989	do	do	50 00	Do
6233	do	do	50 00	Do
3460	do	do	50 00	Do
6231	do	do	50 00	Do
6363	do	do	50 00	Do
6748	do	do	50 00	Do
4347	do	do	50 00	Do
3414	do	do	50 00	Do
648	do	do	50 00	Do
3416	do	do	50 00	Do
3595	do	do	50 00	Do
1548	do	do	50 00	Do
658	do	do	50 00	Do
6962	do	do	50 00	Do
2962	do	do	50 00	Do
2536	do	do	50 00	Do
3691	do	do	50 00	Do
2531	do	do	50 00	Do
2529	do	do	50 00	Do
5608	do	do	50 00	Do
6201	do	do	50 00	Do
1344	do	do	50 00	Do
3956	do	do	50 00	Do
3960	do	do	50 00	Do
1428	do	do	50 00	Do
3996	do	do	50 00	Do
2349	do	do	50 00	Do
2350	do	do	50 00	Do
1096	do	do	50 00	Do
2348	do	do	50 00	Do
1625	do	do	50 00	Do
1624	do	do	50 00	Do
1620	do	do	50 00	Do
3997	do	do	50 00	Do
3995	do	do	50 00	Do
3992	do	do	50 00	Do
3993	do	do	50 00	Do
2334	do	do	50 00	Do
2333	do	do	50 00	Do

157

Bill of particulars.—Indebtedness of State Bank of Illinois.—Continued.

Number.	Date.	Payable to—	Amount.	
2759	Feb'y 10th, 1843	Bearer	50 00	16⅔ pr. ct., end's'd Aug. 15, 1851
5472	do	do	55 00	Do
5660	do	do	50 00	Do
4261	do	do	50 00	Do
5104	do	do	50 00	Do
5105	do	do	50 00	Do
5110	do	do	50 00	Do
5107	do	do	50 00	Do
4259	do	do	50 00	Do
5103	do	do	50 00	Do
2985	do	do	50 00	Do
2405	do	do	50 00	Do
4349	do	do	50 00	Do
2852	do	do	50 00	Do
4900	do	do	50 00	Do
4789	do	do	50 00	Do
1206	do	do	50 00	Do
1245	do	do	50 00	Do
4440	do	do	50 00	Do
1664	do	do	50 00	Do
1665	do	do	50 00	Do
587	do	do	50 00	Do
3632	do	do	50 00	Do
3962	do	do	50 00	Do
6737	do	do	50 00	Do
4318	do	do	50 00	Do
3571	do	do	50 00	Do
537	do	do	50 00	Do
1924	do	do	50 00	Do
5270	do	do	50 00	Do
2948	do	do	50 00	Do
6705	do	do	50 00	Do
2174	do	do	50 00	Do
664	do	do	50 00	Do
2044	do	do	50 00	Do
4101	do	do	50 00	Do
2532	do	do	50 00	Do
3991	do	do	50 00	Do
657	do	do	50 00	Do
2251	do	do	50 00	Do
4609	do	do	50 00	Do
4610	do	do	50 00	Do
2512	do	do	50 00	Do
2509	do	do	50 00	Do
3417	do	do	50 00	Do
2502	do	do	50 00	Do
3628	do	do	50 00	Do
3018	do	do	50 00	Do
2365	do	do	50 00	Do
5256	do	do	50 00	Do
5619	do	do	50 00	Do
3398	do	do	50 00	Do
3020	do	do	50 00	Do
4995	do	do	50 00	Do
3016	do	do	50 00	Do
3399	do	do	50 00	Do
3390	do	do	50 00	Do
3395	do	do	50 00	Do
3021	do	do	50 00	Do
4773	do	do	50 00	Do
4767	do	do	50 00	Do

158

Bill of particulars.—Indebtedness of State Bank of Illinois.—Continued.

Number.	Date.	Payable to—	Amount,	
A. 2698	Feb'y 10, 1843,	Bearer	50 00	16¼ pr. ct., end's'd Aug. 15, 1851.
2366	do	do	50 00	Do
3393	do	do	50 00	Do
2696	do	do	50 00	Do
159 3400	do	do	50 00	Do
2328	do	do	50 00	Do
5623	do	do	50 00	Do
5626	do	do	50 00	Do
5627	do	do	50 00	Do
5628	do	do	50 00	Do
5621	do	do	50 00	Do
5620	do	do	50 00	Do
4760	do	do	50 00	Do
5621	do	do	50 00	Do
4770	do	do	50 00	Do
4761	do	do	50 00	Do
4768	do	do	50 00	Do
4769	do	do	50 00	Do
4771	do	do	50 00	Do
3746	do	do	50 00	Do
3542	do	do	50 00	Do
3202	do	do	50 00	Do
2578	do	do	50 00	Do
5262	do	do	50 00	Do
5264	do	do	50 00	Do
1874	do	do	50 00	Do
5265	do	do	50 00	Do
969	do	do	50 00	Do
3800	do	do	50 00	Do
4664	do	do	50 00	Do
2540	do	do	50 00	Do
3405	do	do	50 00	Do
99	do	do	50 00	Do
80	do	do	50 00	Do
65	do	do	50 00	Do
3378	do	do	50 00	Do
5624	do	do	50 00	Do
5625	do	do	50 00	Do
2115	do	do	50 00	Do
3961	do	do	50 00	Do
3541	do	do	50 00	Do
160 3543	do	do	50 00	Do
1963	do	do	50 00	Do
3544	do	do	50 00	Do
3538	do	do	50 00	Do
3394	do	do	50 00	Do
3392	do	do	50 00	Do
2109	do	do	50 00	Do
2112	do	do	50 00	Do
4766	do	do	50 00	Do
4762	do	do	50 00	Do
2110	do	do	50 00	Do
2107	do	do	50 00	Do
102	do	do	50 00	Do
2116	do	do	50 00	Do
4407	do	do	50 00	Do
3397	do	do	50 00	Do
3396	do	do	50 00	Do
3017	do	do	50 00	Do
3391	do	do	50 00	Do
3015	do	do	50 00	Do

Bill of particulars.—Indebtedness of State Band of Illinois.—Continued.

Number.	Date.	Payable to—	Amount.	
A. 3385	Feby'y 10, 1843.	Bearer.....	50 00	16¾ pr. ct. end's'd Aug. 15, 1851.
3373	.....do.....	....do.....	50 00	Do
3375	.....do.....	....do.....	50 00	Do
1956	.....do.....	....do.....	50 00	Do
3019	.....do.....	....do.....	50 00	Do
3008	.....do.....	....do.....	50 00	Do
4262	.....do.....	....do.....	50 00	Do
1090	.....do.....	....do.....	50 00	Do
1091	.....do.....	....do.....	50 00	Do
3670	.....do.....	....do.....	50 00	Do
3679	.....do.....	....do.....	50 00	Do
3648	.....do.....	....do.....	50 00	Do
3647	.....do.....	....do.....	50 00	Do
1825	.....do.....	....do.....	50 00	Do
3681	.....do.....	....do.....	50 00	Do
1092	.....do.....	....do.....	50 00	Do
1089	.....do.....	....do.....	50 00	Do
3798	.....do.....	....do.....	50 00	Do
2558	.....do.....	....do.....	50 00	Do
1663	.....do.....	....do.....	50 00	Do
2406	.....do.....	....do.....	50 00	Do
1662	.....do.....	....do.....	50 00	Do
1622	.....do.....	....do.....	50 00	Do
4561	.....do.....	....do.....	50 00	Do
1623	.....do.....	....do.....	50 00	Do
3658	.....do.....	....do.....	50 00	Do
5038	.....do.....	....do.....	50 00	Do
4000	.....do.....	....do.....	50 00	Do
3999	.....do.....	....do.....	50 00	Do
3987	.....do.....	....do.....	50 00	Do
2574	.....do.....	....do.....	50 00	Do
3994	.....do.....	....do.....	50 00	Do
1666	.....do.....	....do.....	50 00	Do
2542	.....do.....	....do.....	50 00	Do
2541	.....do.....	....do.....	50 00	Do
1621	.....do.....	....do.....	50 00	Do
3998	.....do.....	....do.....	50 00	Do
4819	.....do.....	....do.....	50 00	Do
1093	.....do.....	....do.....	50 00	Do
4057	.....do.....	....do.....	50 00	Do
891	.....do.....	....do.....	50 00	Do
5392	.....do.....	....do.....	50 00	Do
4060	.....do.....	....do.....	50 00	Do
1228	.....do.....	....do.....	50 00	Do
5605	.....do.....	....do.....	50 00	Do
2511	.....do.....	....do.....	50 00	Do
1991	.....do.....	....do.....	50 00	Do
5614	.....do.....	....do.....	50 00	Do
4950	.....do.....	....do.....	50 00	Do
5613	.....do.....	....do.....	50 00	Do
2922	.....do.....	....do.....	50 00	Do
			11,100 00	
	Less am't endorsed	.....	1,850 00	
			$9,251 00	

JAMES H. KNOWLTON & CHAS. DUNN,
Att'ys fr. Pl'ffs.

162 Circuit Court, to April term, 1854.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS. } Assumpsit.

STATE OF WISCONSIN, *La Fayette County, ss:*

The declaration in this cause having been duly filed by said plaintiff, thereupon, on motion of said plaintiff, by James H. Knowlton and Chas. Dunn, his attorney, ordered that the said defendant do plead thereto within twenty days after personal service of a copy thereof and notice of this rule.

By the court.

JAMES H. KNOWLTON & CHAS. DUNN,
Atty's for Pl'ff.

To Parley Eaton, attorney for the defendant in the cause above entitled:

SIR: You will please to take notice that a rule has been entered (of which the above is a copy) and by which the above-named defendant is required to plead to the declaration of the said plaintiff within twenty days after personal service of a copy of said declaration and notice of said rule, with a copy whereof you are herewith served and to which this notice is subjoined.

Yours, &c.,
JAMES H. KNOWLTON & CHAS. DUNN,
Att'ys for Pl'ff.

Entered on gen'l docket, page 516. D. W. Kyle, clerk. Filed, April 10, 1854, D. W. Kyle, clerk. Filed Jan'y 13th, 1864, L. F. Kellogg, clerk S. C.

163 Circuit Court, to April term, 1854.

Notice to plead.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS. } Assumpsit.

STATE OF WISCONSIN, *La Fayette County, ss:*

The declaration in this cause having been duly filed by said plaintiff, thereupon on motion of said plaintiff, by James H. Knowlton & Charles Dunn, his attorneys—

Ordered that the said defendant do plead thereto within twenty days after personal service of a copy thereof and notice of this rule.

By the court:

JAMES H. KNOWLTON
& CHARLES DUNN,
Att'ys for Plaintiffs.

The clerk of the above-named court will please enter the above rule and oblige.

JAMES H. KNOWLTON
& CHARLES DUNN,
Att'ys for Henry Corwith.

Filed April 10, 1854.

D. W. KYLE, *Clerk.*

Filed Jan'y 13, 1864.

L. F. KELLOGG, *Clerk, S. C.*

164 In Circuit Court.

Plea.

HENRY CORWITH
vs.
STATE BANK OF ILLINOIS.

LA FAYETTE COUNTY, *ss*:

And the said State Bank of Illinois, by Logan & Eaton, their attorneys, come and defend the wrong and injury when, &c., and say that they did not undertake and promise in the manner and as the said plaintiff hath above thereof complained against them, and of this they, the said State Bank of Illinois, put themselves upon the contrary, &c., and the plaintiff doth the like.

LOGAN & EATON,
Att'ys for Defendant.

Entered on general docket, page 516.

D. W. KYLE, *Clerk.*

Filed May 30, 1854.

D. W. KYLE, *lerk.*

Filed Jan'y 13, 1864.

L. F. KELLOGG, *Clerk, S. C.*

165 In the Circuit Court for the county of La Fayette, in the State of Wisconsin, of the October term, A. D. 1854.

Motion of trustees to dismiss.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS. } In attachment.

John Calhoun, Uri Manly, and Nicholas H. Ridgeley, who are trustees and assignees of the State Bank of Illinois, a corporation

which had ceased to exist before the commencement of this suit, come into court and move the court to dismiss the attachment in this cause and the suit founded thereon—

1st. Because before the commencement of this suit all the assets of said bank, including the lands attached in this cause, passed by an act of the legislature of the State of Illinois, assented to by said bank, and also by a deed of assignment duly executed by said bank, to these applicants, passed to and was vested in them for the creditors of said bank and all persons concerned.

2ndly. Because this suit is attempted to be prosecuted against a supposed corporation not in existence at the time of commencing this suit.

3rdly. Because there is no valid law authorizing this proceeding, but the supposed laws under which it has been commenced are invalid and void, because they are in conflict with the Constitution of the United States and of this State.

LOGAN & EATON,
For Applicants.

166 Filed October 19, 1854, in open court.

D. W. KYLE, *Clerk.*

Filed Jan'y 13, 1864.

L. F. KELLOGG, *Clerk. S C.*

In Circuit Court.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS. } *ss.*

Be it remembered that before this cause was called for trial, to wit, on the 19th day of October, John Calhoun, Uri Manly, and Nicholas H. Ridgley, came into court and moved the court to dismiss the attachment in this cause and the suit pending thereon, for the following reasons:

In Circuit Court La Fayette county, October term, A. D. 1854.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS. } In attachment.

John Calhoun, Uri Manly, and Nicholas H. Ridgeley, who are trustees and assignees of the State Bank of Illinois, a corporation which had ceased to exist before the commencement of this suit, came into court and moved the court to dismiss the attachment in this cause and the suit founded thereon, for the following reasons:

1st. Because before the commencement of this suit, all of
167 the assets of said bank, including the lands attached in this cause, passed by an act of the legislature of the State of Illinois, assented to by said bank, and also by a deed of assignment

duly executed by said bank to these applicants, passed to and was vested in them for the benefit of the creditors of said bank, and all persons concerned.

2ndly. Because this suit is attempted to be prosecuted against a supposed corporation not in existence at the time of the commencement of this suit.

3rdly. Because there is no valid law authorizing this proceeding, but the supposed laws under which it been commenced are invalid and void, because they are in conflict with the Constitution of the United States and of this State.

In support of said motion the said Calhoun, Manly, and Ridgley produced and filed the following deed of assignment, and also the following act of the legislature of the State of Illinois:

This indenture, made and entered into this 31st day of October, A. D. 1848, between the president, directors, and company of the State Bank of Illinois, of the first part, and Uri Manly, John Calhoun and Nicholas H. Ridgley, of the second part, witnesseth, that whereas by the second section of an act of the general assembly of the State of Illinois, entitled "An act formally closing the affairs of the State Bank of Illinois," approved March 1st, 1847, it is provided as follows:

168 Sec. 2. If the affairs of the said bank shall not be closed before the said first day of November, 1848, the governor shall appoint three trustees, whose duty it shall be to take charge of all the assets of the said bank, and wind up its affairs, they being governed in doing so by the provisions of an act entitled "An act supplemental to an act to reduce the public debt one million of dollars, and to put the Bank of Illinois into liquidation," approved the 28th February, 1845, so far as said provisions are applicable.

And whereas it has been found impracticable to close the affairs of said bank before the said first day of November, 1848, and the said president, directors, and company of the said State Bank of Illinois being desirous to comply with the provisions of the said second section of the act aforesaid, according to its true intent and meaning, and to secure to the creditors and stockholders of said bank the benefits of the assets of said bank, and the governor of the State of Illinois having designated the said Uri Manly, John Calhoun, and Nicholas H. Ridgley as the three trustees to be appointed by him under the provisions of the second section of the act aforesaid:

Now this indenture witnesseth, that the said president, directors, and company of the State Bank of Illinois, in consideration of the premises aforesaid, and for the further consideration of the sum of one dollar to them in hand paid, have given, granted, bargained, sold, and assigned, and by these presents do give, grant, bar-

169 gain, sell, transfer, and assign to the said Uri Manly, John Calhoun, and Nicholas H. Ridgley, all the assets and property of the said president, directors, and company of the said State Bank of Illinois, and all the lands and town lots of or belonging to the said bank, and all the estate of said bank real, personal, or mixed, of every kind, nature or description, and wherever situated, and

all the rights and credits and choses in action, belonging to or due to said bank, and all judgments recovered by said bank, all bonds, notes, covenants and agreements made to said bank, or to any other person or corporation in trust of said bank, and every kind or description of property or money in possession or in action belonging or due to said bank, or in or to which said bank has any right, claim, or interest, and all stocks of any kind held or claimed by or for said bank.

To have and to hold all the aforesaid property and choses in action to the said Uri Manly, John Calhoun, and Nicholas H. Ridgley, and to the survivor of them, and to the heirs, and executors, and administrators of said survivor forever, yet upon the following trusts and conditions, to wit: The said Uri Manly, John Calhoun, and Nicholas H. Ridgley, and the survivor or survivors of them, shall proceed with all reasonable diligence compatible with the true interests of the parties interested, to realize the assets of said bank hereby conveyed to them, by collecting the debts due to said bank, selling all the real and personal property, stocks, &c., hereby conveyed, and
170 with the proceeds paying all the debts due from said bank, of every kind or description, and after all the debts due from said bank are paid, then shall distribute the surplus amongst the stockholders in said bank, in proportion to their respective amounts of stock. But out of the proceeds of all the assets hereby conveyed and assigned, the said trustees shall, before making any distribution to creditors or stockholders, pay first all taxes and assessments due or to become due on all the property in their hands under the assignments, and belonging to this trust, and also all necessary expenses, costs and charges incurred in taking care of said property, or in discharging their trust in relation thereto, and also all debts contracted and now unpaid, in winding up the affairs of said bank since the first day of March, A. D. 1843. Secondly, they are to retain for their services in executing this trust the sum of three thousand dollars per annum, to be divided amongst them in proportion to the amount of services rendered by each respectively, and the said trustees are hereby authorized in collecting the debts and selling the property herein conveyed to receive in payments any owing by said bank, whether the same be then due and payable or becoming due or payable thereafter, and whether the same be evidenced by note, certificate, bond, or other evidence of indebtedness, and the trustees in executing this trust shall so far as practicable conform to the provisions of the acts of the general assembly hereinbe-
171 fore recited and referred to, and in the event that one or more of the said trustees should die, resign, refuse to act, or be legally removed from said trust, his place shall be filled by a court of competent jurisdiction, and in that event an equal interest in all the property and choses in action hereby conveyed and not then disposed of shall be conveyed to said trustees to be appointed, and he shall have the same power and authority, and be subject to the same trusts as the original trustees.

And all deeds of conveyance for real estate and transfers of per-

sonal property made by said trustees, or the survivor of them, or by such survivor, or survivors, together with the new trustees herein provided for, shall be good and sufficient to transfer to the purchaser all the rights, title, and interest of the president, directors, and company of the State Bank of Illinois in and to such property so sold and conveyed.

In testimony whereof the said president, directors, and company of the State Bank of Illinois, have caused Thomas Mather, president of said bank to affix his name, and have also caused the seal of said bank to be affixed hereto, at the banking house of said bank in Springfield, this 31st day of October, A. D. 1848.

[L. S.] THOMAS MATHER, *Pres't.*

172 AN ACT for finally closing the affairs of the State Bank of Illinois.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the president, directors, and company of the State Bank of Illinois be, and they are hereby, allowed the use of the charter of said bank untill the first day of November, in the year one thousand eight hundred and forty-eight, in addition to the time allowed in the third section of an act of the general assembly entitled "An act to diminish the State debt, and put the State Bank in liquidation," approved January 24, 1843, for the purpose of winding up the affairs of said bank; the use of the charter hereby granted being subject to all the conditions, restrictions, and limitations contained in the third section, and all other portions of same act, and all acts supplemental thereto.

SEC. 2nd. If the affairs of said bank shall not be closed before the said first day of November, 1848, the governor shall appoint three trustees, whose duty it shall be to take charge of all the assets of the said bank, and wind up its affairs, they being governed in doing so, by the provisions of an act entitled "An act supplementary to an act to reduce the public debt one million of dollars, and put the Bank of Illinois into liquidation," approved the 28 day of February, 1845, as far as such said provisions are applicable.

173 SEC. 3. The State Bank of Illinois shall, within three days from the passage of this act, signify their acceptance of the provisions thereof by a writing, signed by the president and cashier, under the seal of the bank, and to be filed in the office of secretary of state.

SEC. 4. That all certificates issued by said bank in pursuance of the provisions of the above-recited act, and all the notes issued by said bank, and in the hands of the school commissioners of the several counties in the State, or in the hands of any treasurer of any school district at the passage of this act, shall, from and after the fourth day of March next, draw interest at the rate of six per cent. per annum, until they shall be taken up, and the said bank is required to pay said interest as aforesaid.

SEC. 5. Said school commissioners and trustees who shall hold said certificates at the passage of this act shall, on or before the first day of

September next, report to the cashier of the bank at Springfield the date and amount of such certificates, which report shall be verified by the oath of such commissioners and treasurers.

SEC. 6. The debtors to said bank shall not be bound to pay any interest on the debts now due said bank, from and after the fourth day of March instant.

174 SEC. 7. The real estate of said bank shall be liable to taxation and sale on execution, in the same manner as the property of individuals.

Approved March 1, 1847.

STATE BANK OF ILLINOIS,
March 3rd, 1847.

Extract from the minutes of the proceedings of the board of directors of this date. The following order was unanimously adopted, viz:

Ordered, that the provisions of a law of the general assembly, entitled "An act for finally closing the affairs of the State Bank of Illinois," approved March 1st, 1847, be accepted by the bank, and that the president and cashier issue the necessary writing of acceptance, under the seal [under the seal] of the bank, provided for in the 3rd section of said act.

We, Thomas Mather, president, and Nicholas H. Ridgley, cashier of the State Bank of Illinois, do hereby certify that the foregoing is a true extract from the minutes of the proceedings of the board of directors of the said bank on this day, in evidence whereof we have hereunto subscribed our names and affixed the seal of said bank the day and date first above written.

[L. S.] THOMAS MATHER, *Pres't.*
N. H. RIDGLEY, *Cashier.*

Rec'd and filed March 4, 1847.

H. S. COOLEY, *Sec. State.*

Afterwards, viz., the following orders were entered upon execution record, Nov. 1st, 1847:

175 The State Bank of Illinois having failed to comply with the provissions of the act of the legislature in relation to finally closing the affairs of said bank, approved March 1st, 1847—

The governor this day approved N. H. Ridgley, Uri Manly, and John Calhoun, esqs., trustees, to take charge of the assets of said bank, and close up its affairs as provided by law.

UNITED STATES OF AMERICA, *State of Illinois, ss:*

I, Alex. Starne, secretary of state in and for Illinois, do hereby certify the foregoing is a true and perfect copy of the enrolled law, on file in my office, also the acceptance of the State Bank of Illinois, and also an order that was entered on the execution record appointing three commissioners under the law.

In testimony whereof I hereto subscribe my name and affix the seal of State, at my office in Springfield, this 29th day of July, A D. 1853.

[L. S.] ALEXANDER STARNE,
Sec'y of State.

It was admitted by the plaintiff that said deed was executed by Thomas Mather, the president of said bank, by order of the board of directors of said bank.

The plaintiff waived notice of making said motion and resisted the same, and thereupon the board overruled said motion, and refused to dismiss the attachment in this cause, to which opinion of the court overruling said motion the said John Calhoun, Uri Manly, and Nicholas H. Ridgley, then and there excepted, and pray that this bill
176 of exception may be signed, sealed, and made part of the record, which is done accordingly.

Oct. 20, 1854.

[SEAL.] J. R. DOOLITTLE,
Circuit Judge.

Entered in vol. 2 of records, page 254.

D. W. KYLE, *Clerk.*

Endorsed: Circuit Court. Henry Corwith *vs.* State Bank of Illinois. Bill of exceptions. Filed in open court Oct. 20th, 1854. D. W. Kyle, clerk. Filed Jan'y 13th, 1864. L. F. Kellogg, clerk, S. C. Logan and Eaton, def'ts att'ys.

Opinion. J. R. Doolittle, judge.

177 LA FAYETTE CIRCUIT:

CORWITH
vs.
STATE BANK.

LA FAYETTE CIRCUIT, *ss*:

CORWITH
vs.
STATE BANK OF ILLINOIS.

Two questions arise:

I. Whether the certificates offered in evidence are evidence under the common courts in assumpsit. They were given by the bank upon a surrender of its bills in circulation to the holders. The title of the act, as well as the section providing for the issue of these certificates, has but one object, and that is to ascertain and fix the amount of the balance of the debt due to the holders of its notes, and this certificate should read as if the act itself were made a part of it, and it would read as follows:

This certificate being given upon full statement of the balance

now due the bearer, will be received in payment of debts due to and property sold by the bank, and will also entitle the holder to all dividends in specie made by the bank among its creditors.

I am of opinion that it is a due bill given on settlement, and the last provision is only what the law would imply without it, and the other provissions are for the benefit of the holder. In the absence of any provission in the law, or in the certificate postponing the time for their payment, or limiting the holders to any particular
178 fund for the collection of the debt due from the bank, I am of the opinion that they are evidence under the common courts in assumpsit.

II. Whether the plaintiff is entitled to interest: This follows as an incident to the debt, at the rate of six per cent., that being the rate of interest in the State of Illinois, as conceded by the counsel on both sides. There is no reason why it should not be allowed.

Suppose the bank should turn out to be solvent, why should not its creditors receive interest upon their demands from the date of this settlement and liquidation?

Filed Oct. 25, 1854.

D. W. KYLE, *Clerk*.

Filed Jan'y 13, 1864.

L. F. KELLOGG, *Clerk S. C.*

One question of fact is submitted to the jury. If the payment of 16⅔ per cent. was applied, or intended to be applied on the principal, you will find for the pl'ff, $16,687 00.

If it was not intended a payment of the principal, you will find for pl'ff, $17,038 00.

We, the jury, find for the plaintiff, and assess his damages at the sum of sixteen thousand six hundred and eighty-seven dollars.

Entered vol. 2 of records, page 254.

Filed Oct. 20, 1854.

D. W. KYLE, *Clerk*.

179 *Attachment.*

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

And now on this day came the parties aforesaid by their respective attorneys, and issue being joined, thereupon came a jury, to wit, Patrick McGrighan, Samuel H. Scales, John Riggle, M. Kilkoin, Geo. Verden, M. Blenksion, Charles Reynhart, J. S. Harris, Jonas Blanchard, W. Lewis, Patrick McGrighan, and Thomas Swainback, twelve good and lawful men, elected, tried, charged, and sworn well and truly to try the issue joined herein, and a true verdict give according to evidence; and the jurors of the jury aforesaid having heard the evidence of the parties herein, and the argument of counsel thereon, and having been instructed as to the law by the court,

retired to their chamber to consider upon their verdict, and in due time the jurors of the jury aforesaid returned into court the following verdict: "We, the jury, find for the plaintiff, and assess his damages at the sum of sixteen thousand six hundred and eighty-seven dollars." Hereupon the jurors of the jury aforesaid were discharged.

Whereupon it is considered, ordered, and adjudged by the court now here, that said Henry Corwith do have and recover of and from said "the State Bank of Illinois" the said sum of sixteen thousand six hundred and eighty-seven dollars so as aforesaid found of the jury as for his damages, and further, that he do have and recover of and from said the "State Bank of Illinois" his costs and charges by [by] him about this suit in that behalf expended, and that he have execution therefor.

Hereupon came the said "State Bank of Illinois," by their attorneys, and by leave of the court here had filed their bill of exceptions in this cause.

Ent. in vol. 2, page 254.

Oct. 20, 1854.

Mo. for new trial.

STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

And now comes the said defendant, by Logan & Eaton, their attorneys, and moves the court for a new trial in this case, for the following reasons:

1st. The court erred in permitting the certificates issued by the officers of the State Bank of Illinois to go the jury as evidence of indebtedness.

2nd. The court erred in instructing the jury to allow interest on those supposed certificates of indebtedness.

3rd. The court erred in not permitting the trustees of the bank to come in and defend in this suit.

LOGAN & EATON,
Atty's for Def't.

Filed Oct. 20, 1854.

D. W. KYLE, *Clerk.*

Filed Jan'y 13, 1864.

L. F. KELLOG, *Clerk S. C.*

181 Circuit Court.

Bill of exceptions.

HENRY CORWITH
vs.
STATE BANK OF ILLINOIS.

It was admitted by the plaintiff that said deed was executed by Thomas Mather, the president of said bank, by order of the board of directors of said bank. The plaintiff waived notice of making said motion, and insisted the same; and thereupon the court overruled said motion and refused to dismiss the attachment in this cause. To which opinion of the court overruling said motion the said Joseph Calhoun, Uri Manly, and Nicholas H. Ridgley, then and there excepted, and pray that this bill of exceptions may be signed, sealed and made part of the record, which is done accordingly.

J. R. DOOLITTLE,
Circuit Judge.

Oct. 20, 1854.

Ent'd vol. 2 of records, page 254.

D. W. KYLE, *Clerk.*

Filed Oct. 20, 1854, in open court.

D. W. KYLE, *Clerk.*

Filed Jan'y 16, 1864.

L. F. KELLOGG, *Clerk S. C.*

182 In the Circuit Court for the county of La Fayette, in the State of Wisconsin, at the October term of said court, A. D. 1854.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

Be it remembered, that on the trial of this cause the plaintiff, to sustain the issue on his part, offered in evidence to the jury the following certificate, the execution of which by the president and cashier of the State Bank of Illinois was admitted, to wit:

50 No. 3,018. A. 50

This certificate for 50 (fifty dollars) will be received at all times by the State Bank of Illinois in payment of any debt due the bank, and for any property which the bank may have for sale. It will also entitle the bearer to the proper proportion of all dividends which may be made to the creditors of the bank.

Springfield, February 10th, 1843.

T. MATHER, *Pres't.*
N. H. RIDGLEY, *Cashier.*

Endorsed: Dividend $16\frac{2}{3}$ per cent. Paid 15th August, 1851. N. H. Purple.

Fifth. Fifth.

It was admitted by the defendant that the said certificate was issued for a balance of the bills of said bank surrendered by the holder in pursuance of the act of the legislature of the State of Illinois, hereafter set forth, after receiving his dividend of the specie of said bank, as required by said law, in connection with said certificate; the plaintiff also offered in evidence the following act of the legislature of the State of Illinois, to wit:

183 Also the following act of the legislature of the State of Illinois, to wit:

AN ACT for finally closing the affairs of the State Bank of Illinois.

SEC. 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the president, directors, and company of the State Bank of Illinois be, and they are hereby, allowed the use of the charter of said bank until the first day of November, in the year one thousand eight hundred and forty-eight, in addition to the time allowed in the third section of an act of the general assembly entitled "An act to diminish the State debt, and to put the State Bank of Illinois into liquidation," approved January 24, 1843, for the purpose of winding up the affairs of the said bank; the use of the charter hereby granted being subject to all the conditions, restrictions, and limitations contained in the said third section, and all other portions of the said act, and all acts supplemental thereto.

SEC. 2. If the affairs of the said bank shall not be closed before the first day of November, 1848, the governor shall appoint three trustees, whose duty it shall be to take charge of all the assets of the said bank, and wind up its affairs, they being governed in doing so by the provisions of an act entitled "An act supplemental to an act to reduce the debt one million of dollars, and to put the Bank of Illinois into liquidation," approved the 28th day of February, 1855, so far as said provisions are applicable.

184 SEC. 3 The State Bank of Illinois shall within three days from the passage of this act signify the acceptance of the provisions thereof, by a writing signed by the president and cashier under the seal of the bank, to be filed in the office of the secretary of state.

SEC. 4. That all certificates iseued by said bank, in pursuance of the provissions of the above-recited act, and all the notes issued by said bank, and in the hands of the school commissioners of the several counties in this State, or in the of any treasurer of any school district, at the passage of this act, shall from and after the 4th day of March next draw interest at the rate of six per cent. per annum untill they shall be taken up. And the said bank is hereby required to pay said interest as aforesaid.

SEC. 5. Said school commissioners and treasurers who shall hold said certificates at the passage of this act shall, on or before the first day of September next, report to the cashier of the bank at Springfield the date and amount of such certificates, which report shall be verified by the oath of said commissioners or treasurer.

SEC. 6. The debtors to said bank shall not be bound to pay any interest on the debts now due said bank, from and after the fourth day of March, instant.

185 SEC. 7. The real estate of said bank shall be liable to taxation and sale on execution in the same manner as the property of individuals.

Approved March 1, 1847.

STATE BANK OF ILLINOIS,
March 3, 1847.

Extracts from the minutes of the proceedings of the board of directors of this date. The following order was unanimously adopted, viz:

Ordered, that the provissions of the law of the general assembly, entitled "An act for finally closing the affairs of the State Bank of Illinois;" approved March 1, 1847, be accepted by the bank, and that the president and cashier issue the necessary writing of acceptance under the seal of the bank, as provided for in the 3rd section of the said act.

We, Thomas Mather, president, and Nicholas H. Ridgely, of the State Bank of Illinois, do hereby certify that the foregoing is a true extract from the minutes of the proceedings of the board of directors of the said bank on this day.

In evidence whereof we have hereunto subscribed our names and affixed the seal of said bank, the day and date first above written.

THOMAS MATHER, *Pres't.*
N. H. RIDGELY, *Cashier.*

186 Rec'd and filed March 4, 1847.
H. S. COOLEY, *Sec. State.*

Afterward, viz., the following order was entered upon execution record November 1st, 1848: The State Bank of Illinois, having failed to comply with the provissions of the act of the legislature in relation to finally closing the affairs of said bank, approved March 1st, 1847, this day appointed N. H. Ridgely, Uri Manly, and John Calhoun, esqs., trustees to take charge of the assets of said bank, and close up its affairs, as provided by law.

UNITED STATES OF AMERICA, *State of Illinois:*

I, Alex. Starne, secretary of state in and for Illinois, do hereby certify the foregoing is a true and perfect copy of an enrolled law on file in my office, also the acceptance of the State Bank of Illinois, and also an order that was entered on the execution record appointing three commissioners under the law.

I testimony whereof I have hereunto subscribed my name and affixed seal of State at my office in Springfield, this 29th day of July, A. D. 1853.

[SEAL.] ALEXANDER STARNE,
Sec'y of State.

And the plaintiff stated that he had no further evidence to introduce in connection with the said before-mentioned evidence to sustain his action. The defendant's counsel then objected to said evidence, and moved the court to exclude the same from the jury, be-
187 cause said evidence did not show or prove any such cause of action in favor of plaintiff as is alleged in the plaintiff's declaration. But the court overruled said motion and permitted the said evidence to go to the jury. To which opinion of the court in overruling said objection, and permitting said evidence to go to the jury, the defendant then and there excepted. And the court then and there, on said trial, instructed the jury that said certificate and the laws of the State of Illinois aforesaid entitled the plaintiffs to recover the amount of said certificate in this action, to which instructions of the court so given the defendant by his counsel then and there excepted. And the court further, on this application of the plaintiff instructed the jury that the plaintiff was entitled to and they should allow interest on said certificate, or so much thereof as remained unpaid from the date thereof, to which instruction of the court the defendant then and there excepted, on the ground that no interest should be allowed thereon, but not for the amount allowed. The plaintiffs further offered in evidence two hundred and twenty-one certificates of the same character, amount, and date, amounting in all to eleven thousand one hundred dollars, on which the same ruling of the court in all respects was made, and said certificates read in evidence, to which several rulings the defendant at the time excepted. On each certificate was an endorsement that sixteen and two-thirds per cent. of said certificates have been paid.

This was all the evidence in the cause material to the decissions aforesaid.

188 The jury, thereupon, found a verdict for the plaintiff for $16,687 00.

The defendant thereupon moved the court for a new trial, for the following reasons:

STATE BANK OF ILLINOIS
vs.
HENRY CORWITH.

And now comes said defendant, by Logan and Eaton, their attorneys, and moves the court for a new trial, for following reasons:

1st. The court erred in permitting the certificates issued by the officer of the State Bank ot Illinois to go to the jury as evidence of indebtedness.

2nd. The court erred in instructing the jury to allow interest on these supposed certificates of indebtedness.

3rd. The court erred in not permitting the trustees of the bank to come in and defend in this suit.

LOGAN & EATON,
Att'ys for Def't.

Which motion was overruled by the court, to which opinion of the court in overruling said motion the defendant then and there excepted, and the defendant now prays that this his bill of exceptions may be signed, sealed and made part of the record, which is done accordingly.

[SEAL.] J. R. DOOLITTLE.
Circuit Judge.

Entered in record book, vol. 2, page 254.
D. W. KYLE, *Clerk.*

189 Endorsed: Circuit Court, Henry Corwith *vs.* State Bank of Illinois. Bill of exceptions. Filed Oct. 20, 1854, in open court. O. W. Kyle, clerk. Logan & Eaton, deft's att'ys.

Circuit Court of April term 1855, to October term 1855.

Attachment.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

STATE OF WISCONSIN, *La Fayette County, ss:*

To the clerk of said court:

SIR: You will please issue a writ of execution in the cause above entitled, directed to the sheriff of Iowa, in this State, returnable, &c., according to law.

Yours, &c.,
JAMES H. KNOWLTON,
Attorney for Plaintiff.

Endorsed: Circuit Court, Henry Corwith *vs.* State Bank of Illinois. Precipe for execution to sheriff of Iowa. Filed May 20, 1855. John K. Williams, clerk. Read on motion and refiled in open court, April 22, 1858. D. W. Kyle, clerk. Filed Jan'y 13, 1864. L. F. Kellogg, clerk S. C. James H. Knowlton, atty.

190 Circuit Court of April term 1855, to October term 1855.

Attachment.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS. } Assumpsit.

STATE OF WISCONSIN, *County of La Fayette, ss:*

To the clerk of said court:

SIR: You will please issue a writ of execution in the cause above entitled, directed to the sheriff of Grant county, in this State, returnable, &c., according to law.

Yours &c.,
JAMES H. KNOWLTON,
Att'y for Plaintiff.

Endorsement: Circuit Court, Henry Corwith *vs.* The State Bank of Illinois. Precipe for execution to the sheriff of Grant Co. Filed May 21st, 1855. John K. Williams, clerk. Read on motion and refiled in open court April 22, 1858. O. W. Kyle, clerk. Filed Jan'y 13, 1864. L. F. Kellogg, clerk S. C. James H. Knowlton, att'ty.

191 Circuit Court.

Attachment.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

STATE OF WISCONSIN, *La Fayette County, ss*:

To the clerk of said court:

SIR: You will please issue an execution directed to the sheriff of this county in the cause above entitled, returnable, &c., according to law.

JAMES H. KNOWLTON,
Atty for Plaintiff.

Endorsed: Henry Corwith *vs.* The State Bank of Illinois. Precipe for execution. Filed April 23d, 1855. John K. Williams, clerk. Ex. issued. Read on motion and refiled in open court April 22, 1858. D. W. Kyle, clerk. Filed Jan. 13, 1864. L. F. Kellogg, clerk S. C. Knowlton, att'y.

192 Circuit Court La Fayette county, Wisconsin, to October term, A. D. 1855.

STATE OF WISCONSIN, *County of La Fayette, ss*:

The State of Wisconsin to the sheriff of said county, greeting:

We command you that of the goods and chattels (except such as are by law exempt) of the State Bank of Illinois, in your bailiwick, you cause to be made the sum of sixteen thousand six hundred and eighty-seven dollars and cents, together with interest thereon from the 20th day of October, A. D. 1854, which Henry Corwith, lately in our Circuit Court, before our judge thereof, at the court-house in Shullsburg, in said county, recovered against it for his damages which he sustained by reason of the non-paying of certain promises and undertakings there lately made by the said State Bank of Illinois to the said Henry Corwith, together with the further sum of eighty dollars and eighty-five cents costs, which was adjudged to him by our said , as for his costs and charges by him about his suit in that behalf expended, whereof the said State Bank of Illinois was convicted, as appears to us of record; and if sufficient goods and chattels of the said State Bank of Illinois cannot be found in your bailiwick that then you cause the sums aforesaid to be made of the lands,

tenements, real estate and chattles real, whereof the said State Bank of Illinois was seized on the 19th day of October, in the year of our Lord 1855, or at any time thereafter, in whose hands soever the same may be. And have you those moneys before our judge of our
193 Circuit Court at the clerk's office in Shullsburg, in said county, on or before the 3rd Monday in October next, and eighty-seven and a half cents for this writ, &c., to render to the Henry Corwith for the damages, costs and charges aforesaid. And have you then and there this writ.

Witness the Hon. Montgomery M. Cothren, judge of our said court, at Shullsburg, this 23rd day of April, A. D. 1855.

[L. S.] Attest: JOHN K. WILLIAMS,
Clerk Circuit Court La Fayette County.

This seal attached by order of court, April 22, 1858.
O. W. KYLE, *Clerk.*

STATE OF WISCONSIN, *County of La Fayette, ss:*

By virtue of this execution to me directed, and the defendant being a non-resident of the State of Wisconsin, I could not find goods and chattels on which to satisfy said execution, and by direction of the plaintiff's attorney I did, on the 21st day of May, A. D. 1855, extend and levy the same upon all the right, title, and interest of the said defendant in and to the following described lands:

The south half of the southeast quarter of section 10, township two, range 1 east, 80 acres; west half of southwest quarter of section twenty-two, township two, range 1 E., 80 acres; west half of northwest quarter of section 17, township 3, range 1 east, 80 acres; south part of east half of northwest quarter of section 18,
194 township 3, range 1 east, 60 acres; east half of southwest quarter of section 19, township 3, range 1 east, 80 acres; west half of southeast quarter of section 28, township 4, range 1 east, 80 acres; southwest quarter of section 33, township 4, range 1 east, 160 acres; southwest quarter of section 31, township 1, range 2, $158\frac{68}{100}$ acres; east half of northeast quarter of section 31, township 1, range 2 east, 80 acres; southeast quarter of section 31, township 1, range 2 east, 160 acres; section 32, township 1, range 2 east, 640 acres; undivided one-half of west half of northeast quarter of section 2, township 2, range 2 east, $43\frac{67}{100}$ acres; undivided one-half of east half of southwest quarter and southwest quarter of southwest quarter of section 9, township 3, range 2, 40 acres; fraction number 2, section 7, township 2, range 4 east, $12\frac{20}{100}$ acres; fraction number 1, section 33, township 2, range 4 east, $45\frac{40}{100}$ acres; east half of northwest quarter of section 33, township 2, range 4 east, 80 acres; northeast fraction 4, of southwest quarter of section 33, township 2, range 4 east, and west fraction 5, of southeast quarter of section 33, township 2, range 4 east, $92\frac{36}{100}$ acres; east half of southwest quarter of section 31, township 3, range 4 east, 80 acres; undivided one-third of east half of northeast quarter of section 5, township 2, range 5 east, $26\frac{67}{100}$ acres; undivided one-third of west half of northeast quar-

ter of section 8, township 2, range 5 east, $26\frac{67}{100}$ acres; undivided one-third of west half of northwest quarter of section 9, town-
195 ship 2, range 5 east, $26\frac{67}{100}$ acres; west half of southeast quarter of section 26, township 2, range 5 east, 80 acres; east half of southeast quarter of section 31, township 2, range 5 east, 80 acres; west half of southeast quarter of section 31, township 2, range 5 east, 80 acres; east half of southeast quarter of section 32, township 2, range 5 east, 80 acres; west half of southwest quarter of section 32, township 2, range 5 east, 80 acres; east half of northwest quarter of section thirty-five, township 2, range 5 east, 80 acres; undivided one-half of northeast quarter of section 35, township 2, range 5 east, 80 acres; west half of southeast quarter of section 36, township 2, range 5 east, 80 acres; undivided one-half of west half of southwest quarter of section 29, township 3, range 5 east, 40 acres; undivided one-half of northwest quarter of section 33, township 4, range 5 east, 80 acres; undivided one-half of northwest quarter of section 33, township 4, range 5 east, 80 acres; undivided one-half of east half of northeast quarter of section 33, township 4, range 5 east, 40 acres; northwest quarter of northeast quarter of section 33, township 4, range 5 east, 40 acres; east half of the southeast quarter of section 21, township 2, range 1 east, 80 acres; north half of northwest quarter of section 27, township 2, range 1 east, 80 acres; the property of the said debtor, and advertized the same, posting up a notice in three public places in each of the towns of Shullsburg,
196 White Oak Springs, New Diggings, Benton, Elk Grove, Center, Kendall, Belmont, Argyle, Wiota, and Gratiot, where said land is situated, and also caused a like notice to be published for six successive weeks previous to such sale, that such land would be sold at public auction, in the court-house, at the village of Shullsburg, on the 23d day of July, A. D. 1855, between the hours of nine in the forenoon and the setting of the sun of the said day; and I did, at the same time and place advertized, sell the said land of the following named persons: south half of the southeast quarter of section 10, township 2, range 1 east, 80 acres, to Henry Corwith for the sum of sixty dollars, that being the highest bid for the same; the west half of the southwest quarter of section 22, township 2, range 1 east, 80 acres, to C. L. Stephenson for the sum of two hundred dollars, that being the highest bid for the same; the west half of the northwest quarter of section 17, township 3, range 1 east, 80 acres, to Henry Corwith for the sum of three hundred dollars, that being the highest bid for the same; south part of east half of northwest quarter of section 18, township 3, range 1 east, 60 acres, to C. L. Stephenson for the sum of one hundred and fifty dollars, that being the highest bid for the same; east half of southwest quarter, section 19, township 3, range 1 east, 80 acres, to William Field for the sum of one hundred dollars, that being the highest bid for the same; west half of southeast quarter of section 28, township 4, range 1
197 east, 80 acres, to C. L. Stephenson, for the sum of one hundred and forty dollars, that being the highest bid for the same; southwest quarter of section 33, township 4, range 1 east, 160

acres, to C. L. Stephenson for the sum of three hundred and fifty dollars, that being the highest bid for the same; east half of southwest quarter, section 31, township one, range 2 east, 80 acres, to Cyrus Woodman for the sum of four hundred and twenty-five dollars, that being the highest bid for the same; west half of southwest quarter of sec. 31, township one, range 2 east, 80 acres, to Solomon Oliver for the sum of five hundred and twenty dollars, that being the highest bid for the same; east half of the northeast quarter of section 31, township 1, range 2 east, 80 acres, to C. L. Stephenson for the sum of three hundred dollars, that being the highest did for the same; southeast quarter section 31, township 1, range 2 east, 160 acres, to Cyrus Woodman for the sum of nine hundred and twenty-five dollars, that being the highest bid for the same; section 32, township 1, range 2 east, 640 acres, was sold in fractions as follows: the west half of the northwest quarter, section 32, township 1, range 2 east, to Henry Corwith for the sum of two hundred and fifty dollars, that being the highest bid for the same; the east half of the northwest quarter, section 32, township 1, range 2 east, to Samuel Scales
198 for the sum of two hundred and fifty dollars, that being the highest bid for the same; the southeast quarter of the northeast quarter of section 32, township 1, range 2 east, to Henry Corwith for the sum of two hundred and fifty dollars, that being the highest bid for the same; west half of southwest quarter of section 32, township 1, range 2 E., to J. S. Kelso for the sum of two hundred and fifty-five dollars, that being the highest bid for the same; the east half of the southeast quarter of section thirty-two, town. 1, range 2 east, to James H. Earnest for the sum of three hundred and five dollars, that being the highest bid for the same; west half of southeast quarter of section 32, town. 1, range 2 east, to James H. Earnest for the sum of three hundred and ten dollars, that being the highest bid for the same; the undivided half of west half of northeast quarter of section 2, town. 2, range 2 east, to Henry Corwith for the sum of one hundred dollars, that being the highest bid for the same; undivided half of the east half of the southwest quarter, and southwest quarter of southwest quarter of section 9, township 3, range 2 east, 406 acres, the was no bid; fraction 2, section seven (7,) township 2, range 4 east, $12\frac{20}{100}$ acres, to Henry Corwith for the sum of fifty dollars, that being the highest bid for the same; fraction No. 1, section 33, township 2, range 4 east, $45\frac{42}{100}$ acres, to
199 William Fields for the sum of fifty dollars, that being the highest bid for the same; the east half of the northwest quarter of section 33, township 2, range 4 east, 80 acres, to William Field, for the sum of thirty-one dollars, that being the highest bid for the same; the northeast fraction 4, of southwest quarter of section 33, township 2, range 4 east, to John Thompson, for the sum of one hundred and thirty-five dollars, that being the highest bid for the same; west fraction 5, of southeast quarter, section 33, town. 2, range 4 east, to John Thompson, for the sum of one hundred and forty dollars, that being the highest bid for the same; the east half of southwest quarter, section 31, township 3,

range 4 E., 80 acres, was struck off to John Griffin, but he did not call for his certificate; the undivided one-third of the east half of northeast quarter of section 5, township 2, range 5 east, $26\frac{67}{100}$ acres, to D. Evans, for the sum of fifty-five dollars, that being the highest bid for the same; undivided one-third of west ½ of northeast quarter of section 8, township 2, range 5, $26\frac{67}{100}$ acres, to S. W. Fulp, for the sum of fifty-five dollars, that being the highest bid for the same; undivided one-third of west half of northwest quarter of section 9, township 2, range 5 east, $26\frac{67}{100}$, to John Luce, for the sum of fifty-five dollars, that being the highest bid for the same; the west half of the southeast quarter of section 26, township 2, range 5, 80 acres, no bid; east half of southeast quarter of section 31, township 2, range 5 east, 80 acres, to C. L. Stephenson, for the sum of two hundred dollars, that being the highest bid for the same; the
200 west of the southeast quarter of section 31, township 2, range 5 east, 80 acres, to C. L. Stephenson, for the sum of one hundred and seventy-five dollars, that being the highest bid for the same; east half of southeast quarter of section 32, township 2, range 5 east, 80 acres, was struck off to John Ryan, but he did not [not] call for his certificate; west half of southwest quarter of section 32, township 2, range 5 east, 80 acres, to C. L. Stephenson, for the sum of two hundred dollars, that being the highest bid for the same; east half of northwest quarter of section 35, township 2, range 5 east, no bid; the west half of southeast quarter of section 36, township 2, range 5 east, 80 acres, to C. L. Stephenson, for the sum of two hundred dollars, that being the highest bid for the same; undivided half of west half of southwest quarter of section 29, township 3, range east, to John March, for the sum of one hundred dollars, that being the highest bid for the same; undivided one half of northwest quarter of section 33, township 4, range 5, to C. L. Stephenson, for the sum of two hundred dollars, that being the highest bid for the same; undivided half of northeast quarter of section 33, township 4, range 5, to Henry Corwith, for the sum one hundred dollars, that being the highest bid for the same; the northwest quarter of northeast quarter, section 33, township 3, range 5 east, to C. L. Stephenson, for one hundred dollars,
201 that being the highest bid for the same; for the east half of southeast quarter of section 21, township 2, range 1 east, no bid; the north half of northwest quarter of section 27, township 2, range 1 east, no bid; and for all that were taken I executed duplicate certificate of such sale as required by law, one of which I delivered to each of said purchasers, the other I filed with the register of deeds of said county; the said sums of money mentioned above I paid over to the attorney of the plaintiff in part satisfaction of said execution.

AMI DODGE,
Sheriff of La Fayette County, Wisconsin.
By OSCAR M. DEERING,
Deputy.

Sheriff's sale.

HENRY CORWITH
against
THE STATE BANK OF ILLINOIS. } Attachment assumpsit.

By virtue of a writ of fieri facias out of and under the seal of the Circuit Court, for the county of La Fayette, and State of Wisconsin, bearing testes the 23rd day of April, A. D. 1855, in the above entitled cause, and to me directed and delivered against the goods and chattels, lands and tenements of the above named defendant; I have this day levied upon and seized all the right, title and interest of the above named defendant, the State Bank of Illinois, to the following described real estate as the property of the above named defendant,
to wit, (for description of land levied upon and here omitted,
202 see sheriff's return above given; the lands sold as described
here being the same lands that were levied up) which lands lie and are situate in La Fayette county, in the State of Wisconsin, and all of which I shall expose to sale at public vendue to the highest and best bidder for cash, and shall sell the same and all the right, title, interest and claim which said defendant had in and to the above described lands and real estate, on the thirteenth day of October, in the year of our Lord one thousand eight hundred and fifty-three, or at any time since that day, or which said defendant would have had, had said defendant not ceased to act as a body corporate, at the front door of the court house, in the village of Shullsburg, on Monday, the 23rd day of July in the year of our Lord one thousand eight hundred and fifty-five, between the hours of nine o'clock in the forenoon and the setting of the sun of said day, to satisfy said writ and costs as the law directs.

Sheriff's office, Shullsburg, La Fayette county, Wis., May 21st, 1855.

AMI DODGE,
Sheriff of La Fayette County Wisconsin.
Per OSCAR M. DEERING,
Deputy Sheriff.
JAMES H. KNOWLTON,
Pl'ff's Att'y.

203 *Proof of publication.*

STATE OF WISCONSIN, *La Fayette County, ss*:

Charles F. Trevitt, being duly sworn, deposes and says, that he is the publisher of the "Patriot and Flag" a weekly newspaper printed at Shullsburg, county and State aforesaid, and that the annexed advertizement was published in said newspaper once in each week for six weeks in succession, the last publication bearing date July 18, 1855.

Subscribed and sworn to before me this 23rd day of July, 1855.

CHARLES F. TREVITT.
JOHNATHAN J. MARVIN,
County Judge.

Sheriff's sale.

HENRY CORWITH
against
THE STATE BANK OF ILLINOIS. } Attachment assumpsit.

By virtue of a writ of fieri facias issued out of and under the seal of the Circuit Court for the county of La Fayette and State of Wisconsin, bearing testes the 23rd day of April A. D. 1855, in the above-entitled cause, and to me directed and delivered, against the goods and chattels, land and tenements of the above-named defendant, the State Bank of Illinois, to the following described real estate as the property of the above-named defendant, to wit, the west half of northwest quarter, section 17, township 3, range 1 east, 80 acres; the undivided half of west half of northeast quarter of section 2, town. 2, range 2 east; also the east half of the southwest quarter of section 19, township 3, range 1 east, containing 80 acres;
204 fractional number 1, section 33, township 2, range 4 east, containing $45\frac{42}{100}$ acres; east half of the northwest quarter of section 33, township 3, range 4 east, containing 80 acres; east half of the southeast quarter of section 32, township 2, range 5 east, containing 80 acres; which lands lie and are situate in La Fayette county, in the State of Wisconsin, and all of which I shall expose to sale at public vendue, to the highest and best bidder for cash, and shall sell the same and all the rights, title, interest and claim which the said defendant had in and to the above-described lands and real estate on the nineteenth day of October, in the year of our Lord one thousand eight hundred and fifty-thre, or at any time since that day, or which said defendant would have had therein, had said defendant not ceased to act as a body corporate, at the front door of the court-house in the village of Shullsburg, on Saturday, the first day of September, in the year of our Lord one thousand eight hundred and fifty-five, between the hours of nine o'clock in the forenoon and the setting of the sun the same day, to satisfy said writ and costs as the law directs.

Sheriff's office, Shullsburg, La Fayette Co., Wis., July 9th, 1855.

AMI DODGE,
Sheriff of La Fayette County, Wisconsin.
Per OSCAR M. DEERING,
Deputy Sheriff.
JAMES H. KNOWLTON,
Pl'ff's Att'y.

205 The above sale is postponed till the 6th day of October, A. D. 1855.

AMI DODGE, *Sheriff.*
Per OSCAR M. DEERING, *Deputy.*

The above sale is postponed till the 13th day of October, A. D. 1855; time and place as above.

AMI DODGE, *Sheriff.*
Per OSCAR M. DEERING, *Deputy.*

STATE OF WISCONSIN, *County of La Fayette, ss*:

I, W. P. Langworthy, being duly sworn, depose and say that I am one of the publishers of the "La Fayette County Herald," a weekly paper published at Shullsburg, county and State aforesaid; and that the notice a copy of which is hereto annexed, has been published in said newspaper for six successive weeks once in each week, commencing on the 31st day of August, A. D. 1855.

W. P. LANGWORTHY.

Subscribed and sworn to before me this 11th day of October, A. D. 1855.

J. J. MARVIN,
County Judge.

206 Endorsed: No. 138. Circuit Court La Fayette co., Wis., to October term, 1855. Henry Corwith *vs.* The State Bank of Illinois. Fi. fa. Damages, $16,687 00; costs, 80 85; int. from Oct. 20, '54, ; printer's fees, ; sheriff's fees, ; clerk, Williams, on this am't, 87½; total, . Rec'd this writ May 18, A. D. 1855, at 7 o'clock p. m. Ammi Dodge, sheriff, per Oscar M. Deering, deputy. Returned and filed Oct. 19, 1855. John K. Williams, clerk. James H. Knowlton, esq., pl'ff's att'y.

Circuit Court, La Fayette county, Wisconsin, to October term, A. D. 1855.

STATE OF WISCONSIN, *County of La Fayette*:

The State of Wisconsin to the sheriff of Grant county, greeting:

We command you that the goods and chattels (except such as are by law exempt) of the State Bank of Illinois, in your bailiwick, you cause to be made the sum of sixteen thousand six hundred and eighty-seven dollars and cents, together with interest thereon from the 20th day of October, A. D. 1854, which Henry Corwith, lately in our Circuit Court, before our judge thereof, at the court-house in Shullsburg in said county, recovered against it for his damages which he had sustained by reason of the non-paying certain promises and
207 undertakings there lately made by the said State Bank of Illinois to the said Henry Corwith, together with the further sum of eighty dollars and eighty-five cents, which was adjudged to him by our said court for his costs and charges by him about his suit in that behalf expended, whereof the said State Bank of Illinois was convicted, as appears to us of record, and if sufficient goods and chattels of the State Bank of Illinois cannot be found in your bailiwick, that then you cause the sums aforesaid to be made of the lands, tenements, real estate and chattels real whereof the said State Bank of Illinois was seized on the 19th day of October, in the year of our Lord 1853, or at any time thereafter, in whose hands soever the same may be, and have you those moneys before our judge of our Circuit Court at the clerk's office in Shullsburg, in said county on or before the 3rd Monday in October next, and eighty-seven and a half cents

for this writ, &c., to render to the said Henry Corwith for the damages, costs and charges aforesaid, and have you then and there this writ.

Witness the Hon. Montgomery M. Cothren, judge of our said court, at Shullsburg, this 21st day of May, A. D. 1855.

Attest: JOHN K. WILLIAMS.
Clerk Circuit Court La Fayette County, Wis.

This seal attached by order of the court made April 22, 1858.
[L. S.] D. W. KYLE, *Clerk*.

208 Endorsed: No. 140. Circuit Court La Fayette county, Wis., to October term, 1855. Henry Corwith *vs.* The State Bank of Illinois. Fi. fa. Damage, $16,687 00; costs, 80 85; int. from Oct. 20, '54, ; printer's fees, : sheriff's fees, ; clerk, Williams, on this writ, 87½; total, $. Rec'd this writ May 26, A. D. 1855, at 6 o'clock p. m. L. Preston, sheriff Grant co. Returned and filed Oct 16, 1855. John K. Williams, clerk. Filed Jan'y 13, 1864. L. F. Kellogg, clerk S. C. James H. Knowlton, esq., pl'ff's atty.

STATE OF WISCONSIN, *County of Grant, ss*:

I, Lorenzo Preston, of the county aforesaid, do hereby certify and return make to this writ, that I could not find the defendant named in this writ whereon to serve this writ, and neither could I find any goods and chattels belonging to said defendant whereof to satisfy this writ, and the same not being paid by said defendant or by any person for said defendant, I did on the first day of June, A. D. 1865, by virtue of this writ, levy on, take and seize all the right, title and interest which the said defendant State Bank of Illinois had on the 19th day of October, A. D. 1853, or at any time thereafter, being
209 the day on which the lands and premises hereinafter described were attached and seized under the original writ of attachment issued in the within entitled cause against the said defendant, of and to the following pieces of land situated and being in the county aforesaid, which will be found more fully described in the annexed proof of publication; that I did subsequent to the said levy, and more than six weeks previous to the 31st day of July, 1855, post up three printed notices in three of the most public places in each of the towns in which said lands are situated in said county, and also I caused a copy of said notice to be published six successive weeks immediately preceding the 31st day of July, 1855, in the "Grant County Herald," a weekly newspaper printed in said town of Lancaster, which notice stated that I would sell the premises above levied upon at public auction to the highest bidder at the outward door of the court-house in the town of Lancaster aforesaid, for cash, on the said 31st day of July, 1855, between the hours of nine o'clock in the forenoon and the setting of the sun of said day; that I did, in pursuance of the laws of said State, of this writ and levy, and notice at the time and place of sale mentioned in said notice, expose the said

lands and premises for sale at public auction as above levied upon, and thereupon at the time and place of sale aforesaid sell at public auction the lands and premises above levied upon, to wit, all the right, title, and interest which the said defendant State Bank of Illinois had on the said 19th day of October, A. D. 1853, or at any time thereafter, of, in and to the east half of the southeast quarter of section 13, town. 2, range 1 west, for the sum of one hundred and fifty dollars, to Nelson Dewey; also the east half the southwest quarter
210 and the southwest quarter of the northeast quarter of section 26, town. 4, range 1, for the sum of three hundred dollars, to Nelson Dewey; also west half of northeast quarter of section 5, town. 1, range 2, for the sum of one hundred and fifty dollars, to Nelson Dewey; also west half of southeast quarter of section 5, town. 1, range 2, for the sum of one hundred and fifty dollars, to Nelson Dewey; east half of southwest quarter of section 5, town. 1, range 2, for the sum of one hundred and fifty dollars, to Nelson Dewey; also east half of southeast quarter of section 34, town. 2, range 2, for the sum of two hundred and fifty dollars, to Nelson Dewey; also east half of southwest quarter of section 34, town. 2, range 2, for the sum of two hundred and fifty dollars, to Neslon Dewey; also northwest quarter of section 19, town. 8, range 2, for the sum of one hundred and fifty dollars, to Nelson Dewey; also the southeast quarter of southwest quarter of section 2, town. 2, range 3, for the sum of one hundred dollars, to Nelson Dewey; also the west half of southeast quarter of section 19, town. 8, range 3, for the sum of one hundred dollars, to Nelson Dewey; also the southwest quarter of section 11, town. 3, range 5, for the sum of two hundred and fifty dollars, to Nelson Dewey; also undivided third of north half and west half of of southwest quarter of section 17, town. 3, range 5, for the sum of one hundred and fifty dollars, to Nelson Dewey, he being the highest and best bidder; I also sold the southeast quarter of
211 section 4, township 2, range 3, to Julius Augustine, for the sum of one thousand three hundred and seventy-five dollars; also the east half of the southwest quarter of section 4, town 2, range 3, for the sum of three hundred dollars, to Julius Augustine; also northeast quarter of northwest fractional quarter of section 9, town. 2, range 3, for the sum of two hundredand fifteen dollars, to Julius Augustine; also south fraction of nothwest quarter of section 9, town 2, range 3, for the sum of one hundred and seventy-five dollars, to Julius Augustine, he being the highest and best bidder for said lands set to him; and I also sold the undivided half of east half of northeast quarter of section 30, town. 2, range 2, for the sum of one hundred and ten dollars, to William Roberts, he being the highest bidder for the same; also the undivided half of the northwest quarter of section 29, town. 2, range 2, to H. Corwith, for the sum of one hundred and seventy-five dollars, to H. Corwith, he being the highest bidder for the same; also the northwest quarter of section thirty-two, town. 3, range 3, for the sum of six hundred and twenty-five dollars, to Edward Warrington, he being the highest and best bidder; also west half southwest quarter of section 17, town. 8,

range 2, for the sum of two hundred dollars, to Rev. M. Coates and Wm. McGonigal, they being the highest bidder for the same.

And I further return that on the 30th day of August, 1855, between the hours of one and two o'clock in the afternoon, according to notice duly given, and according to law, I also sold to
212 John Ross the southwest quarter of [of] section 33, town. 3, range 3, for the sum of six hundred and fifty dollars; also southeast quarter of section 32, town. 3, range 3, for the sum of eight hundred and fifty dollars, he being the highest and best bidder for the same. I further return make that all the lands sold amounted in the aggregate to the sum of six thousand eight hundred and twenty-five dollars.

	$6,825 00
My fees taken from the above.....	109 75
Leaves the sum of six thousand seven hundred and fifteen dollars and twenty-five cents to be credited on the within execution, which money I have paid over to H. Corwith, the plaintiff in the within writ.....	$6,715 25

Dated sheriff's office, Lancaster, the 13th day of October, A. D. 1855.

LORENZO PRESTON,
Sheriff, Grant County, Wis.

Sheriff's sale.

HENRY CORWITH
vs.
THE STATE OF ILLINOIS. } Attachment.—Assumpsit.

By virtue of a writ of fieri facias issued out of and under the seal of the Circuit Court for the county of La Fayette and State of Wisconsin, bearing testis the twenty-first day of May, A. D. 1855, in the above-entitled cause, and to me directed and delivered against the goods and chattels, lands and tenements of the above-named defendant, I have this day levied upon and seized all the right,
213 title, and interest of the above-named defendant, the State Bank of Illinois, to the following described real estate as the property of the above-named defendant, to wit: the east half of the southeast quarter of section 13, town. 2, range 1 west, 80 acres; east half of the southwest quarter and southwest quarter of northeast quarter of section 26, town. 4, range 1, 120 acres; west half of northeast quarter of section 5, town. 1, range 2, 77 66-100 acres; west half, southeast quarter of section 5, town. 1, range 2, 80 acres; east half of southwest quarter of section 5, town. 1, range 2, 80 acres; undivided half of northwest quarter of section 29, town. 2, range 2, 80 acres; undivided half of east half of northeast quarter of section 30, town. 2, range 2, 40 acres; east half southeast quarter of section 34, town. 2, range 2, 80 acres; east half southwest quarter of section 34, town. 2, range 2, 80 acres; west half, southwest quarter of section 17, town. 8, range 2, 80 acres; northwest quarter of section 19,

town. 8, range 2, 159 45-100 acres; southeast quarter of southwest quarter of section 2, town. 2, range 3, 40 acres; southeast quarter of section 4, town. 2, range 3, 160 acres; east half of southwest quarter of section 4, town. 2, range 3, 80 acres; northeast quarter of northwest fractional quarter of section 9, town. 2, range 3, 40 acres; south fraction of northwest quarter of section 9, town. 2, range 3, 40 77-100 acres; northwest quarter of section 32, town. 3, range 3, 160 acres; southeast quarter of section 33, town. 3, range, 159 80-100 acres; west half of southeast quarter of section 13, town. 8, range 3, 80 acres; southwest quarter of section 11, town. 3, range 5, 160 acres; undivided third of north half and west half of south-
214 west quarter of section 17, town. 3, range 5, 133 33-100 acres; which lands lie and are situate in Grant county, in the State of Wisconsin, and all of which I shall expose to sale at public vendure to the highest and best bidder, for cash, and shall sell the same, and all the right, title, interest, and claim which the said defendant had in and to the above-described lands and real estate on the 19th day of October, in the year of our Lord one thousand eight hundred and fifty-three, or at any time since that day, or which said defendant would have had therein, had said defendant not ceased to act as a body corporate, at the front door of the court-house, in the village of Lancaster, on Tuesday, the 31st day of July, in the year of our Lord one thousand eight hundred and fifty-five, between the hours of nine o'clock in the forenoon and the setting of the sun of said day, to satisfy the said writ and costs as the law directs.

Sheriff's office, Lancaster, Grant county, Wisconsin, June 1, 1855.

LORENZO PRESTON,
Sheriff Grant County, Wisconsin.
JAMES H. KNOWLTON,
Pl'ff's Att'ys.

Proof of publication.

STATE OF WISCONSIN, *County of Grant, ss:*

LANCASTER, *July* 17, 1855.

I, Joseph C. Cover, the editor, and one of the publishers of "Grant County Herald," a weekly newspaper printed and published at Lancaster, Grant county, Wisconsin, do solemnly swear that the annexed notice has been published six (6) weeks successively in said newspaper, commencing, in No. 49 of vol. 6 of said paper, pub-
215 lished on the 3rd day of July, A. D. 1855, and ending with No. 2 of vol. 7, published on the 9th day of July, A. D. 1855.

JOSEPH C. COVER.

Subscribed and sworn to before me this 17th day of July, A. D. 1855.

STEPHEN MAHOOD,
Justice of the Peace, Lancaster, Wis.

Printer's fees; six insertions, 8 folios	11 20
Certificate	25
	$11 45

Sheriff's sale.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS. } Attachment; assumpsit.

By virtue of a writ of fieri facias issued out of and under the seal of the Circuit Court for the county of La Fayette and State of Wisconsin, bearing testis the twenty-first day of May, A. D. 1855, in the above-entitled cause, and to me directed and delivered against the goods and chattels, lands and tenements of the above-named defendant, I this day levied upon and seized all the right, title, and interest of the above-named defendant, The State Bank of Illinois, to the following described real estate, as the property of the above-named defendant, to wit: The southwest quarter of section 33, town. 3, range 3 west, containing 159 80-100 acres; and the southeast quarter of section 32, town. 3, range 3 west, containing 160 acres,
which lands lie and are situate in Grant county, in the State
216 of Wisconsin, and all of which I shall expose to sale at public vendue to the highest and best bidder for cash, and shall sell the same and all the right, title, and interest, and claim which the said defendant had in and to the above-described lands and real estate on the 19th day of October, in the year of our Lord one thousand eight hundred and fifty-three, or at any time since that day, or which said defendant would have had therein had said defendant not ceased to act as a body corporate, at the front door of the court-house, in the village of Lancaster, on Tuesday the 21st day of August, in the year of our Lord one thousand eight hundred and fifty-five, between the hours of nine o'clock in the forenoon and the setting of the sun of said day, to satisfy said writ and costs as the law directs.

Sheriff office, Lancaster, Grant county, Wisconsin, July 5, 1855.

LORENZO PRESTON,
Sheriff of Grant Co., Wis.
JAMES H. KNOWLTON,
Pl'ff's Att'y.

Notice is hereby given that the above sale, for the want of bidders, is adjourned untill one o'clock in the afternoon of the 30th day of August, A. D. 1855.

Lancaster, August 22, 1855.

LORENZO PRESTON,
Sheriff Grant County, Wisconsin.

217 *Proof of publication.*

STATE OF WISCONSIN, *County of Grant, ss*:

LANCASTER, *August* 27, 1855.

I, Joseph C. Cover, the editor and one of the publishers of the "Grant County Herald," a newspaper published at Lancaster, Grant county, Wisconsin, do solemnly swear that the annexed notice has

been published one week in said newspaper in No. 9, of vol. 7, published on the 27th day of August, A. D. 1855.

JOSEPH C. COVER.

Subscribed and sworn to this 27th day of August, 1855, before me.

STEPHEN MAHOOD,
Justice of the Peace, Lancaster, Wis.

Printer's fees.

One insertion, 5 fol	$2 09
Certificate	25
	$2 25

Sheriff's sale.—Attachment.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS. } Assumpsit.

By virtue of a writ fieri facias issued out of and under the seal of the Circuit Court for La Fayette county, and State of Wisconsin, bearing testis the twenty-first day of May, A. D. 1855, in the above-entitled cause, and to me directed and delivered against the goods and chattels, lands and tenements of the above-named defendant, I have this day levied upon and seized all the right, title, and interest of the above-named defendant, the State Bank of Illinois, to
218 the following described real estate, as the property of the above-named defendant, to wit: The southwest quarter of section 33, town. 3, range 3 west, containing 159 80-100 acres, and the southeast quarter of section 32, town. 3, range 3 west, containing 160 acres, which lands lie and are situate in Grant county, in the State of Wisconsin, and all of which I shall expose to sale at public vendue to the highest and best bidder for cash, and shall sell the same and all the right, title, interest, and claim which the said defendant had in and to the above-described lands and real estate, on the 19th day of October, in the year of our Lord one thousand eight hundred and fifty-three, or at any time since that day, or which said defendant would have had therein had said defendant not ceased to act as a body corporate, at the front door of the court-house in the village of Lancaster, on Tuesday, the 21st day of August, in the year of our Lord one thousand eight hundred and fifty-five, between the hours of nine o'clock in the forenoon and the setting of the sun of said day, to satisfy said writ and costs, as the law directs.

Sheriff's office, Lancaster, Grant county, Wisconsin, July 5, 1855.

LORENZO PRESTON,
Sheriff, Grant County, Wisconsin.

JAMES H. KNOWLTON,
Pl'ff's Att'y.

219 *Proof of publication.*

STATE OF WISCONSIN, *County of Grant, ss* :

LANCASTER, *Aug.* 18, 1855.

I, Joseph C. Cover, the editor and one of the publishers of the Grant county Herald, a weekly newspaper printed and published at Lancaster, Grant county, Wisconsin, do solemnly swear that the annexed notice has been published six (6) weeks successively in said newspaper, commencing in No. 2 of vol. 7 of said paper, published on the 9th day of July, A. D. 1855, and ending with No. 7 of vol. 7, published on the 13th day of August, A. D. 1855.

JOSEPH C. COVER.

Subscribed and sworn to this 18th day of August, A. D. 1855, before me.

STEPHEN MAHOOD,
Justice of the Peace, Lancaster, Wis.

Printer's fees.

6 insertions, 4 folios	$5 60
Certificate	25
	$5 50

220 Circuit Court, La Fayette county, Wisconsin, to October term, A. D. 1855.

STATE OF WISCONSIN, *County of La Fayette, ss* :

The State of Wisconsin to the sheriff of Iowa county :

We command you that of the goods and chattles (except such as are by law exempt) of the State Bank of Illinois in your bailiwick, you cause to be made the sum of sixteen thousand six hundred and eighty-seven dollars and cents, together with interest thereon from the 20th day of October, A. D. 1854, which Henry Corwith, lately in our Circuit Court, before our judge thereof, at the court-house in Shullsburg, in said county, recovered against it for its damages which he had sustained by reason of the non-paying certain promises and undertakings there made by the said State Bank of Illinois to Henry Corwith, together with the further sum of eighty dollars and eighty-five cents which was adjudged to him by our said court, as for his costs and charges by him about his suit in that behalf expended, whereof the said State Bank of Illinois was convicted, as appears to us of record, and if sufficient goods and chattels of the said State Bank of Illinois cannot be found in your bailiwick, that then you cause the sums aforesaid to be made of the lands, tenements, real estate, and chattels real whereof the said State Bank of Illinois was seized on the 19th day of October, in the year of our Lord, 1853, or at any

time thereafter, in whose hand soever the same may be, and have those moneys before our judge of our Circuit Court at the
221 clerk's office in Shullsburg, in said county, on or before the 3rd Monday in October next, and eighty-seven and a half cents for this writ, &c., to render unto the said Henry Corwith for the damages, costs, and charges aforesaid, and have you there this writ.

Witness the Hon. Montgomery M. Cothren, judge of our said court at Shullsburg, this 21st day of May, A. D. 1855.

[L. S.] Attest: JOHN K. WILLIAMS,
Clerk Circuit Court, La Fayette County, Wis.

This seal attached by order of the court, made April 22, 1858.
D. W. KYLE, *Clerk.*

Endorsed: No. 141. Circuit Court, La Fayette co., Wis. To October term, 1855. Henry Corwith *vs.* The State Bank of Illinois. Fi. Fa. Damages, $16,687,00; costs, $80,00, int. from Oct. 20, 1854, 1,038,02; printer's fees, $14,60; sheriff's fees, $43,00; clerk, Williams, on this writ, $87½; total, $17,864 34½ — 3,293 26; balance due, 4,571 08½. Rece'd this writ May 26, 1855, at 3 o'clock, p. m., Levi Sterling, sheriff, Iowa co. Filed May 27, 1857, in the clerk's office, D. W. Kyle, clerk. Filed Jan'y 13, 1864, L. F. Kellogg, clerk, S. C. James H. Knowlton, pl'ff's atto'y.

222 STATE OF WISCONSIN, *County of Iowa, ss:*

By virtue of this execution to me directed on the 28th day of May, A. D. 1855, I, by direction of the plaintiff's attorney, levied the same upon and seized the following described lands or real estate, to wit, the east half of the northeast quarter of section 2, township 4, range 1 east, 75 86-100 acres; west half of the northwest quarter of section 2, township 4, range 1 east, 77 41-100 acres; the undivided one-fourth part of the west half of the northeast quarter of section 34, township 5, range 1 east, 20 acres; west half southwest quarter of section 17, township 6, range 1 east, 80 acres; east half of the southwest quarter of section 17, township 6, range 1 30 acres; east half of the northwest quarter of section 20, township 6, range 1 east, 80 acres; west half of the northwest quarter of section 20, township 6, range 1 east, 80 acres; west half of the southeast quarter of section 30, township 7, range 1 east, 80 acres; east half of the southwest quarter of section 30, township 7, range 1 east, 80 acres; east half of the southeast quarter of section 31, township 7, range 1 east, 80 acres; west half of the southeast quarter of section 34, township 7, range 1 east, 80 acres; west half of the southwest quarter of section 32, township 7, range 1 east, 80 acres; the undivided one-fourth part of the southeast quarter and the east half of the southwest quarter of section 8, township 8, range 1 east, 120 acres; the undivided one-half of the northeast quarter and the east half of the northwest quarter of section 17, township 8, range 1 east, 120 acres; east half of the southeast quarter of section 10, township 4, range 2 east, 80 acres; northwest quarter of sec-

223 tion 14, township 4, range 2 east, 160 acres; west half of the southeast quarter and the northeast quarter of the southeast quarter of section 35, township 2, range 5 east, 120 acres; and the northwest quarter of section 30, township 6, range 4 east, 140 99-100 acres; all which land lie and are situated in Iowa county in the State of Wisconsin, as the property of the State Bank of Illinois, the said defendant, and advertised, by posting up a notice in three public places in each town where said lands are situated, and by publishing the same in the Mineral Point Tribune, a newspaper published in the village of Mineral Point in said county of Iowa, that said lands would be sold at public vendue to the highest and best bidder for cash, and sell the same and all the right, title, interest, and claim which the said State Bank of Illinois had in and to the above described lands and real estate on the 19th day of October, A. D. 1854, or at any time since that day, or which said defendant would have had therein had said State Bank of Illinois not ceased to act as a body corporate, at the front door of the court-house, in the village of Mineral Point, on Saturday the 14th day of July, A. D. 1855, between the hours of nine o'clock in the forenoon and the setting of the sun of said day, to satisfy said writ and costs as the law directs. So answers:

LEVI STERLING,
Sheriff Iowa County, Wisconsin.

Sheriff's office, Mineral Point, May 28, 1855.

224 *Sheriff's return on sale.—Fi. Fa. No.* 14.

Circuit Court Lafayette co., Wis.

STATE OF WISCONSIN, *County of Iowa, ss:*

And I hereby certify that I did, at the time and place advertized, a copy of which advertizement or a proof of publication is hereto annexed and made part of my return herein, to wit, on the 14th day of July, A. D. 1855, at the front door of the court-house in the village of Mineral Point, in the county of Iowa, and State of Wisconsin, between the hours of nine o'clock in the forenoon and the setting of the sun of said day, I did offer the said lands at public vendue to the highest and best bidder for cash, separately, each tract of land in the order in which it was advertized, and did sell the same as follows, viz: For the east half of the northeast quarter of section No. two, (2,) in township No. four (4) north of range No. one (1) east, containing $75\frac{86}{100}$ acres; Henry Corwith bid the sum of two dollars per acre, $\$151\ \frac{72}{100}$ dollars, which being the highest sum bid for said tract of land, the same was struck down to him at that price; and for the west half of the northwest quarter of section No. two, (2,) in township No. 4 north of range No. (1) east, containing $77\frac{41}{100}$ acres. Henry Corwith bid the sum of two dollars per acre, $\$154\ \frac{82}{100}$, which being the highest sum bid for said tract of land, the same was struck down to him at that price; and for the equal and undivided one-fourth part

of the west half of the northeast quarter of section thirty-four,
225 (34,) in township No. five (5) north of range No. one (1) east, containing twenty acres, Henry Corwith bid the sum of one hundred dollars, which being the highest sum bid for the said tract of land, the same was struck down to him at that price; and for the west half of the southwest quarter of section No. seventeen, (17,) in township No. six (6) north of range No. one (1) east, containing 80 acres, Henry Corwith bid the sum of two dollars per acre, $160, which being the highest bid for the said tract of land, the same was struck down to him at that price; and for the east half of the southwest quarter of section No. seventeen, (17,) in township No. six (6) north of range No. one (1) east, containing 80 acres, Henry Corwith bid the sum of two dollars per acre, $160, which being the highest sum bid for said tract of land, the same was struck down to him at that price; and for the east half of the northwest quarter of section No. twenty, (20,) in township No. six (6) north of range No. 1 east, containing 80 acres, Henry Corwith bid the sum of two dollars and fifty cents per acre, $200, which being the highest sum bid for said tract of land, the same was struck down to him at that price; and for the west half of the northwest quarter of section No. twenty, (20,) in township No. six (6) north of range No. one (1) east, containing 80 acres, Henry Corwith bid the sum of two dollars and fifty cents per acre, $200, which being the highest sum bid for said tract of land, the same was struck down to him at that price; and for the
226 west half of the southeast quarter of section No. thirty, (30,) in towhship No. seven (7) north of range No. one (1) east, containing 80 acres, Henry Corwith bid the sum of one dollar and seventy-five cents per acre, $140, which being the highest sum bid for said tract of land, the same was struck down to him at that price; and for the east half of the southwest quarter of section No. thirty, (30,) in township No. seven (7) north of range No. one (1) east, containing 80 acres, Henry Corwith bid the sum of two dollars per acre, $160, which being the highest sum bid for said tract of land, the same was struck down to him at that price; and for the east half of southeast quarter of section No. thirty-one, (31,) in township No. (7) north of range No. one (1) east, containing 80 acres, Henry Corwith bid the sum of two dollars per acre, $160, which being the highest sum bid for said tract of land, the same was struck down to him at that price; and for the west half of the southeast quarter of section thirty. (30,) in township No. seven (7) north of range No. one (1) east, containing 80 acres, Henry Corwith bid the sum of two dollars per acre, $160, which being the highest sum bid for the said tract of land, the same was struck down to him at that price; and for the west half of the southwest quarter of section No. thirty, (30,) in township No. seven (7) north of range No. one (1) east, containing 80 acres, Henry Corwith bid the sum of two dollars per acre, $160, which being the highest sum bid for said tract of land, the same was
227 struck down to him at that price; and for the undivided one-fourth part and the east-half of southwest quarter of the southeast quarter of section No. eight, (8,) in township No. 8 north of

range No. one (1) east, containing one hundred and twenty acres, (120,) Benjamin M. Coates, of Muscoda, Grant co., bid the sum of two hundred and thirty dollars, ($230,) which being the highest sum bid for said tract of land, the same was struck down to him at that price; and for the undivided one-half part of the northeast quarter, and east-half of the northwest quarter of section seventeen, (17,) in township No. eight (8) north of range No. one (1) east, containing 120 acres, La Fayette G. Dimock, of Harrisburg, Pennsylvania, bid the sum of four hundred dollars, ($400,) which being the highest sum bid for said tract of land, the same was struck down to him at that price; and for the east half of the southeast quarter of section No. ten, (10,) in township No. four (4) north of range No. two (2) east, containing 80 acres, John J. Wren, of the town of Mineral Point, bid the sum of thirty dollars, (30,) which being the highest sum bid for the said tract of land, the same was struck down to him at that price; and for the northwest quarter of section No. fourteen, (14,) township No. four (4) north of range No. two (2) east, containing 160 acres, Henry Corwith bid the sum of one dollar and fifty cents per acre, $240, which being the highest sum bid for said tract of land, the same was struck down to him at that price; and for the northwest quarter
of section No. thirty, (30,) in township No. six (6) north of
228 range No. four (4) east, containing 140 $\frac{99}{100}$ acres, Henry Corwith bid the sum of one dollar and seventy-five cents per acre, $246 $\frac{72}{100}$, which being the highest sum bid for said tract of land, the same was struck down to him at that price; all of said lands lying east of the fourth principal meridian in the county of Iowa, State of Wisconsin, and the whole consideration for which they were sold was three thousand and fifty-three dollars and twenty-six cents; and I executed duplicate certificates of such sale to each of said purchasers, viz: To Henry Corwith, Benjamin M. Coates, La. Fayette G. Dimock, and John J. Wren, and the others I filed with register of deeds of the county of Iowa, State aforesaid, which said sum of money, after taking out my fees, and those of the printer for publishing the notices of sale, I paid over to the person authorized to receive the same as per his endorsement herein. So answers.

LEVI STERLING,
Sheriff Iowa County, Wisconsin.

Sheriff's office, Mineral Point, July 14, 1855.
$3,053 26.

STATE OF WISCONSIN, *County of Iowa, ss*:

I hereby certify that by virtue of this writ, on the 28th day of May, A. D. 1855, I levied the same upon the west half of the southeast quarter and northeast quarter of the southeast quarter of section No. thirty-five, in township No. five (5) north of range No. two (2) east, containing 120 acres; an error existing in the description of
said land, in advertizing the same to be sold on the 14th day
229 of July, A. D. 1855. I advertized said lands by publishing a notice in the Mineral Point Tribune for six successive weeks

prior to the day of sale, with a description of the property to be sold, also by posting up a notice in three public places in the towns where said lands are situated that said lands would be sold on the 25th day of August, A. D. 1855, to the highest bidder for cash, at the front door of the court-house in the village of Mineral Point, between the hours of nine o'clock in the forenoon and the setting of the sum of said day, to satisfy said writ and costs.

LEVI STERLING,
Sheriff Iowa County, Wis.

STATE OF WISCONSIN, *County of Iowa, ss*:

I hereby certify that I did, at the time and place advertized, to wit, on the 25th day of August, A. D. 1855, at the front door of the court-house, in the town of Mineral Point, county of Iowa, between the hours of nine o'clock in the forenoon of said day and the setting of the sun, offer said lands to the highest and best bidder, viz, the west half of the southeast quarter, and the northeast quarter of section No. thirty-five, (35,) in township No. five (5) north of range No. two (2) east of the fourth principal meridian, and did sell the same to Henry Corwith for the sum of two dollars per acre. $240, he being the highest bidder, and that being the highest sum bid, the same was struck down to him at that price, and executed duplicate certificates of such sale as required by law, one of which I delivered to said purchaser, and the other I filed with the register of
230 deeds of Iowa county, Wis.; which said sum of $3,293 34, the amount of said sales, after deducting the sum of $57 60, the amount of printer's and my own fees, the balance of $3,233 66 cents, I have paid over to said plaintiff as per receipt, leaving a balance yet due and unsatisfied on this writ of $14,571 08½ cents.

So answers

LEVI STERLING,
Sheriff Iowa Co.

August 25, 1855.

Sheriff's sale.—Attachment.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS. } Assumpsit.

By virtue of a writ of fieri facias issued out of and under the seal of the Circuit Court for the county of La Fayette, and State of Wisconsin, bearing testis the 21st day of May, A. D. 1855, in the above-entitled cause, and to me directed and delivered, against the goods and chattels, lands and tenements of the above-named defendant. I have this day levied upon and seized all the right, title, and interest of the above-named defendant, "The State Bank of Illinois," to the following-described real estate as the property of the above-named defendant, to wit, the east half of the northeast quarter of section 2, township 4, range 1 east, 75 86-100 acres; west half of the

northwest quarter of section 2, township 4, range 1 east, 75 86-100 acres; west half of the northwest quarter of section 2, township 2, range 4 east, 77 41-100 acres; the undivided one-fourth part of
231 the west half of the northeast quarter of section 34, township 5, range 1 east, 20 acres; west half of the southwest quarter of section 17, township 6, range 1 east, 80 acres; east half of southwest quarter of section 17, township 6, range 1 east, 80 acres; east half the northwest quarter of section 20, township 6, range 1 east, 80 acres; west half of the northwest quarter of section 20, township 6, range 1 east, 80 acres; west half of the southeast quarter of section 30, township 7, range 1 east, 80 acres; east half of the southwest quarter of section 30, township 7, range 1 east, 80 acres; east, half of the southeast quarter of section 31, township 7, range 1 east, 80 acres; west half of the southeast quarter of section 31, township 7, range 1 east, 80 acres; west half of the southwest quarter of section 32, township 7, range 1 east, 80 acres; the undivided one-fourth part of the southeast quarter, and the east half of the southwest quarter of section 8, township 8, range 1 east, 120 acres; the undivided one-half of the northeast quarter, and the east half of the northwest quarter of section 17, township 8, range 1 east, 120 acres; east half of southeast quarter of section 10, township 4, range 2 east, 80 acres; northwest quarter of section 14, township 4, range 2 east, 160 acres; west half of the southeast quarter, and the northeast quarter of the southeast quarter of section 35, township 2, range 5 east, 120 acres, and the northwest quarter of section 30, township 6, range 4 east, 140 99-100 acres, which land lie and are situated in Iowa county, in the State of Wisconsin, and all of which I shall expose to sale at public vendue to the highest and best bidder
232 for cash, and shall sell the same, and all the right, title, interest and claim which said defendant had in and to the above described lands and real estate, on the nineteenth day of October, in the year of our Lord one thousand eight hundred and fifty-three. or at any time since that day, or which said defendant would have had therein had said defendant not ceased to act as a body corporate, at the front door of the court-house, in the village of Mineral Point, on Saturday, the 14th day of July, in the year of our Lord one thousand eight hundred and fifty-five, between the hours of nine in the forenoon and the setting of the sun of the said day, to satisfy said writ and costs. as the law directs.

LEVI STERLING,
Sheriff Iowa County, Wis.

Sheriff's Office, Mineral Point, May 28, 1855.

JAMES H. KNOWLTON,
Pl'ff's Att'y.

STATE OF WISCONSIN, *County of Iowa, ss:*

George W. Bliss, being duly sworn, deposes and says that he is publisher of the Mineral Point Tribune, a newspaper published at Mineral Point, in said county of Iowa; that the notice, of which a

copy is hereunto annexed, was duly published in said newspaper for and during six successive weeks, commencing on the 30th day of May, A. D. 1855, and ending July 11th, A. D. 1855.

GEO. W. BLISS.

233 Subscribed and sworn before me this 23rd day of July, A. D. 1855.

AMASA COBB,
Notary Public of Wisconsin,
residing in Iowa county.

Printer's fees $9 00.

Circuit Court, La Fayette county.

At a term of the Circuit Court for the county of La Fayette, and held in the court-house in the town of Shullsburg in said county, on the third Monday of April, 1858. Present, the Hon. M. M. Cothren, judge of said court.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

An order having been made in open court in this cause on the 20th day of April, being the second day of this same term, requireing the said defendant to show cause before this court, at the court-house in Shullsburg, in said county of La Fayette, on Thursday, the 22nd day of April, instant, at 3 o'clock p. m. of said day, why the execution in this cause, issued to the sheriff of La Fayette, Grant, and Iowa counties, respectively, then and now on file in this court, should not be amended by affixing a seal to each of said executions, respectively.

And now, on this 22nd day of April, 1858, comes the plaintiff, by Dunn & Sleeper, his attorneys, and on reading and filing due
234 proof of service of copy of said order, with copies of the affidavits of J. K. Williams, made on the 17th day of April, 1855, and of the precipes for said executions, copies of said executions, and the returns of the sheriffs of the counties of La Fayette, Grant, and Iowa, respectively, on Samuel Crawford, esquire, attorney for said the said defendant, and reading and filing the said precipes, writs, and returns, and the said affidavits of the said J. K. Williams, by which it appears, among other things, that the said John K. Williams, who, at the time of issuing said executions was the clerk of this court, and that he omitted to affix to said writs or either of them any seal, and the counsel for the said plaintiff having prayed the said court for a rule or order amending the said writs and each of them by affixing thereto the seal of this court, nunc pro tunc, as of the day of issuing the said writs. And after hearing Messrs. Dunn & Sleeper for the plaintiff, and Samuel Crawford, esq., for the defendant, it is ordered that the motion or prayer of the said plaintiff be, and the same is hereby, sustained, and the clerk of the court is hereby ordered

and directed to attach the seal of this court to the several executions at this time.

By the court:

M. M. COTHREN, *Judge.*

Endorsed: Circuit Court. Henry Corwith *vs.* The State Bank of Illinois. Order amending execution. Dunn & Sleeper, p'lff's att'y. Filed in open court, April 22, 1858. D. W. Kyle, clerk. Filed Jan'y 13, 1864. L. F. Kellogg, clerk S. C.

235 To the Hon. M. M. Cothren, judge of the 5th judicial circuit:

The petition of John Bracken respectfully shows to this hon. court that your petitioner is the agent of the State Bank of Illinois; that on or about the 20th day of October, A. D. 1854, one Henry Corwith, by the consideration of the Circuit Court of the county of La Fayette, obtained judgment against the State Bank of Illinois for sixteen thousand six hundred and eighty-seven dollars, together with eighty dollars and eighty-seven cents costs by suit; from which judgment the State Bank of Illinois sued out and prosecuted their writ of error from the Supreme Court, and that such proceedings were had therein; that on the 19th day of November, 1855, the Supreme Court reversed the judgment of the Circuit Court of the county of La Fayette, with costs, with directions to award a venire facias de novo to said Circuit Court.

Your petitioner would further show, that afterwards, to wit, at the April term of the Circuit Court in and for the county of La Fayette, in the year 1858, plaintiff in the court below asked and obtained leave to nonsuit, and therefore took nothing by his writ; and the same was quashed and set aside for naught.

Your petitioner further shows, that the plaintiff in said suit, Henry Corwith sued out from the Circuit Court of La Fayette county, on the 21st day of May, 1855, what purported to be three executions or writs of fiera facias, each for the full amount of said judgment and costs, but without any seal of the court attached to either of

236 them. One of said pretended writs was directed and delivered to the sheriff of Iowa county, and one to the sheriff of Grant county; that the sheriff of [of] each of said proceeded to, and did each of them levy their said executions or pretended executions upon large tracts of valuable lands belonging to the State Bank of Illinois, situate, lying, and being in each of the aforesaid counties; that the sheriff of the county of Grant did, on the 31st day of July, A. D. 1855, sell on said writ about twenty-two hundred and ten acres of said lands in that county, and gave to the different purchasers certificates of the said purchases.

That on the 14th day of July and 25th August, 1855, the sheriff of Iowa county sold upon said writ directed to him about ten hundred and thirty acres of the lands of said State Bank to different individuals, and gave like certificates to the said purchasers; and that on the 23rd day of July, 1855, the sheriff of La Fayette county sold at public vendue, by virtue of said writ directed to him, about twenty

copy is hereunto annexed, was duly published in said newspaper for and during six successive weeks, commencing on the 30th day of May, A. D. 1855, and ending July 11th, A. D. 1855.

GEO. W. BLISS.

233 Subscribed and sworn before me this 23rd day of July, A. D. 1855.

AMASA COBB,
Notary Public of Wisconsin,
residing in Iowa county.

Printer's fees $9 00.

Circuit Court, La Fayette county.

At a term of the Circuit Court for the county of La Fayette, and held in the court-house in the town of Shullsburg in said county, on the third Monday of April, 1858. Present, the Hon. M. M. Cothren, judge of said court.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

An order having been made in open court in this cause on the 20th day of April, being the second day of this same term, requireing the said defendant to show cause before this court, at the court-house in Shullsburg, in said county of La Fayette, on Thursday, the 22nd day of April, instant, at 3 o'clock p. m. of said day, why the execution in this cause, issued to the sheriff of La Fayette, Grant, and Iowa counties, respectively, then and now on file in this court, should not be amended by affixing a seal to each of said executions, respectively.

And now, on this 22nd day of April, 1858, comes the plaintiff, by Dunn & Sleeper, his attorneys, and on reading and filing due
234 proof of service of copy of said order, with copies of the affidavits of J. K. Williams, made on the 17th day of April, 1855, and of the precipes for said executions, copies of said executions, and the returns of the sheriffs of the counties of La Fayette, Grant, and Iowa, respectively, on Samuel Crawford, esquire, attorney for said the said defendant, and reading and filing the said precipes, writs, and returns, and the said affidavits of the said J. K. Williams, by which it appears, among other things, that the said John K. Williams, who, at the time of issuing said executions was the clerk of this court, and that he omitted to affix to said writs or either of them any seal, and the counsel for the said plaintiff having prayed the said court for a rule or order amending the said writs and each of them by affixing thereto the seal of this court, nunc pro tunc, as of the day of issuing the said writs. And after hearing Messrs. Dunn & Sleeper for the plaintiff, and Samuel Crawford, esq., for the defendant, it is ordered that the motion or prayer of the said plaintiff be, and the same is hereby, sustained, and the clerk of the court is hereby ordered

and directed to attach the seal of this court to the several executions at this time.

By the court:

M. M. COTHREN, *Judge.*

Endorsed: Circuit Court. Henry Corwith *vs.* The State Bank of Illinois. Order amending execution. Dunn & Sleeper, p'lff's att'y. Filed in open court, April 22, 1858. D. W. Kyle, clerk. Filed Jan'y 13, 1864. L. F. Kellogg, clerk S. C.

235 To the Hon. M. M. Cothren, judge of the 5th judicial circuit:

The petition of John Bracken respectfully shows to this hon. court that your petitioner is the agent of the State Bank of Illinois; that on or about the 20th day of October, A. D. 1854, one Henry Corwith, by the consideration of the Circuit Court of the county of La Fayette, obtained judgment against the State Bank of Illinois for sixteen thousand six hundred and eighty-seven dollars, together with eighty dollars and eighty-seven cents costs by suit; from which judgment the State Bank of Illinois sued out and prosecuted their writ of error from the Supreme Court, and that such proceedings were had therein; that on the 19th day of November, 1855, the Supreme Court reversed the judgment of the Circuit Court of the county of La Fayette, with costs, with directions to award a venire facias de novo to said Circuit Court.

Your petitioner would further show, that afterwards, to wit, at the April term of the Circuit Court in and for the county of La Fayette, in the year 1858, plaintiff in the court below asked and obtained leave to nonsuit, and therefore took nothing by his writ; and the same was quashed and set aside for naught.

Your petitioner further shows, that the plaintiff in said suit, Henry Corwith sued out from the Circuit Court of La Fayette county, on the 21st day of May, 1855, what purported to be three executions or writs of fiera facias, each for the full amount of said judgment and costs, but without any seal of the court attached to either of
236 them. One of said pretended writs was directed and delivered to the sheriff of Iowa county, and one to the sheriff of Grant county; that the sheriff of [of] each of said proceeded to, and did each of them levy their said executions or pretended executions upon large tracts of valuable lands belonging to the State Bank of Illinois, situate, lying, and being in each of the aforesaid counties; that the sheriff of the county of Grant did, on the 31st day of July, A. D. 1855, sell on said writ about twenty-two hundred and ten acres of said lands in that county, and gave to the different purchasers certificates of the said purchases.

That on the 14th day of July and 25th August, 1855, the sheriff of Iowa county sold upon said writ directed to him about ten hundred and thirty acres of the lands of said State Bank to different individuals, and gave like certificates to the said purchasers; and that on the 23rd day of July, 1855, the sheriff of La Fayette county sold at public vendue, by virtue of said writ directed to him, about twenty

eight hundred and thirty-two acres of said lands to different individuals, and delivered certificates to the different purchasers therefor.

And your petitioner would further show, that at the April term of the Circuit Court of La Fayette county, in the year 1857, by the consideration of said court, all of said executions were by the court set aside, quashed, and declared null and void, as well as all sales made under them, for the reason they were issued and executed without any seal of said court; from which said decision an appeal was
237 prayed for and obtained by said Henry Corwith to the Supreme Court, where it is now pending and undecided. And the time having expired when the purchasers would have been entitled to deeds from the sheriffs of each of the said counties, if the aforesaid sale had been proper and legal, and as great and manifest injury and injustice would accrue to the State Bank of Illinois, and a multiplicity of lawsuits would be prevented if the deeds to the different purchasers were withheld till after a final decision of the Supreme Court in the premises, and as the rights and interests of such purchasers can in no manner be compromised or jeopardized by the withholding the same, your petitioner, therefore, prays the hon. court to grant to the State Bank of Illinois an order of injunction, directed to the sheriffs of each of the counties of La Fayette, Grant, and Iowa, their under sheriffs, deputies or attorneys, and each and every of them, commanding and restraining each and every of them from executing, making, and delivering any deed or deeds to any purchaser or purchasers, his or their assigns or assignees, of all or any of the lands so sold by any sheriff on either of the said executions, in either of the aforesaid counties of La Fayette, Grant, and Iowa, and your petitioner will ever pray.

JOHN BRACKEN, *Agent, &c.*

238 STATE OF WISCONSIN, *Iowa County, ss:*

John Bracken, being duly sworn, does depose and say, that he is the agent of the State Bank of Illinois; that he has read the above petition, and knows the contents thereof, and that the same is true so far as his knowledge extends, and as to the remainder, he believes it to be true.

JOHN BRACKEN.

Subscribed and sworn to before me this 21st June, 1858.

M. CORVIN,
Clerk Circuit Court Iowa Co., Wis.

THE STATE BANK OF ILLINOIS
vs.
HENRY CORWITH. } La Fayette county.

It appearing satisfactory to me by the affidavit of John Bracken, as contained in the above petition, that sufficient grounds for an order of injunction exists, I do hereby order that the sheriffs of Iowa

county, Grant county, and La Fayette county, Wisconsin, each of them, refrain from executing deeds upon either or any of the executions specified in the above petition until the further order of this court.

Given under my hand this 25th day of June, A. D. 1858.

M. M. COTHREN,
Circuit Judge.

239 Endorsed: Henry Corwith vs. the State Bank of Illinois. Petition and order of injunction. Filed in the clerk's office of the Circuit Court July 2, A. D. 1858. D. W. Kyle, clerk. By Geo. W. Miles, deputy clerk. Filed Jan'y 13, 1864. L. F. Kellogg, clerk, S. C. Eaton and Crawford, deft's att'y.

Be it remembered that at a term of the Supreme Court of the State of Wisconsin, began and held in the capitol at Madison, the seat of government of said State, on the third Tuesday, to wit, on the seventeenth day of November, A. D. 1855, present the Hon. Edward V. Whiton, chief justice, and the Hon. Abram D. Smith and the Hon. Orsamus Cole, associate justices of said court, the following proceedings were had inter alia, to wit;

THE STATE BANK OF ILLINOIS, plaintiff in error. *vs.* HENRY CORWITH, def't in error.	Error to Circuit Court, Lafayette county, State of Wisconsin.

This cause came on to be heard on the transcript of the record from the Circuit Court of Lafayette county, and was argued by counsel.

On consideration whereof, it is by the court now here considered, ordered and adjudged, the judgment of the Circuit Court of La Fayette in this cause be and the same is hereby reversed with
240 costs, and that the cause be and the same is hereby remanded to the said Circuit Court, with directions to award a venire facias de novo.

STATE OF WISCONSIN, *Supreme Court, ss*:

I, La Fayette Kellogg, clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true copy of the order and judgment of the court in the above entitled as appears of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Madison, this 8th day of December, A. D. 1855.

[SEAL.] LA FAYETTE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

Endorsed: Supreme Court. The State Bank of Illinois, pl'ff in error, vs. Henry Corwith, def't in error. Remittitur. Filed April 3rd, 1857, D. W. Kyle, clerk. Filed July 21, 1864. L. F. Kellogg, clerk. S. C.

Attachment.

241 HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

And now on this day came the plaintiff herein by his attorneys Dunn & Sleeper, esq', and moved the court here for a non-suit herein, for reasons shown, and the court now being sufficiently advised of and concerning said motion, doth consider, order, adjudge, that the said plaintiff take nothing by his said writ, but that the same be and is hereby quashed, and that the said defendant do go thereof without day, &c.

And it is further considered, ordered and adjudged by the court here, that the said defendant herein do recover against the said plaintiff herein his costs and charges by him laid out and expended in the defense herein, and that execution do issue therefor, &c.

Entered in vol. 2 of records, page 570.

Non-suit entered April 21, 1858.

Circuit Court of April term, 1857.

STATE OF WISCONSIN, *County of La Fayette, ss:*

Pleas before the Hon. M. M. Cothren, presiding judge in and for said county and State, at a term of said court, held at the court-house in Shullsburg, in said county, on the 20th day of April, A. D. 1857, on the 8th day of said court, to wit: on the 28th day of April, 1857, the following proceedings were had, to wit:

D. W. KYLE, *Clerk.*
O. M. DEERING, *Sheriff.*

Clerk's fees	$7 00
Justice's	62
	7 62

242 Endorsed: Filed Dec. 22, 1857. L. F. Kellogg, clerk, S. C. Filed July 21, 1864. L. F. Kellogg, clerk, S. C.

Circuit Court, Lafayette county, Wisconsin.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

On application and motion of Samuel Crawford, esquire, attorney for the above defendant, it is ordered that the said defendant have leave to withdraw from the files in this cause the original deed or indenture of assignment from the State Bank of Illinois, by its presi-

dent and cashier, to the trustees of said bank, appointed under the laws of Illinois, which assignment was put in evidence in this cause on the former trial herein, but before the same is withdrawn the clerk of said court shall make out and file in said cause a true, correct and exemplified copy of said assignment, at the cost and expense of said defendant.

Dated May 5, 1857.

By the court.

M. M. COTHREN, *Judge.*

243 Circuit Court of La Fayette county, to April term, 1857

Motion.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

STATE OF WISCONSIN, *County of La Fayette, ss:*

And now comes the said defendant, the State Bank of Illinois, by Eaton and Crawford, attorneys, and moves the court to set aside the sales of real estate made upon the writs of fieri facias, or executions issued in this case to the sheriff of the county of Iowa, for the following reasons, to wit:

1st. Because the judgment in this case rendered in the Circuit Court of La Fayette county, and upon which the said executions was issued, has been by the Supreme Court of the State of Wisconsin; vacated, set aside, reversed, and wholly for nothing esteemed; and therefore by virtue of the statutes of Wisconsin the purchasers of said real estate have no right to obtain a title to the same, and said purchasers have by said statute a right of recovery against said plaintiff for the amounts by them respectively paid upon said purchase, with interest.

2nd. Because the sales aforesaid have not been made in accordance with the laws of Wisconsin concerning sales on executions, nor was there full and sufficient notice of said sales.

3rd. Because no full and sufficient certificates of such sales, duly authenticated, have been made out and filed, as the law requires.

4th Because the return upon said writ is insufficient and imperfect in many respects, and especially in that it does not show that
244 there was not sufficient personal property of the defendant on which to levy, and from which to make the amount named in the writ.

5th. Because of divers other imperfections, illegalities, and omissions of duty in the levy, publications and sales aforesaid, which are apparent on the record writ and return.

PARLEY EATON & SAMUEL CRAWFORD,
Attorneys for Defendant.

Endorsed: Filed Dec. 22, 1857. L. F. Kellogg, clerk, S. C. Filed July 21, 1864. L. F. Kellogg, clerk, S. C.

Circuit Court La Fayette county, to April term, 1857.

Copy of notice.

THE STATE BANK OF ILLINOIS *ads.* HENRY CORWITH. } Motion to set aside sales on execution.

STATE OF WISCONSIN, *County of La Fayette, ss:*

To the above named plaintiff, Henry Corwith, and his attorneys, and to Hon. Nelson Dewey, one of the purchasers at the sale on execution made by the sheriff of Iowa co., Wis:

245 You are hereby notified that a motion, with a copy of which accompanying this notice you are now served, will be brought up for argument at the next term of the Circuit Court in and for the county of La Fayette, to be begun and held in the court-house in Shullsburg, in said county, on the third Monday of April next, to wit, on the 20th day of April, A. D. 1857, the same being the first day of said term, or as soon thereafter as counsel can be heard, the object of which motion is to set aside, annul, and vacate the sales of real estate made upon and by virtue of the executions issued upon the judgment rendered in the above-entitled cause in the said Circuit Court.

The said motion is based upon the records, writs, and returns thereto pertaining to the said cause in the Supreme Court of the State of Wisconsin, and in the said Circuit Court of La Fayette county.

Dated March 28th, 1857.

Yours, respectfully,
EATON & CRAWFORD,
Attorneys for Defendant.

STATE OF WISCONSIN, *County of Iowa, ss:*

Thomas Scott Ansley, being duly sworn, deposes and says that he is a student in the office of Samuel Crawford, one of the attorneys of the defendant in the cause mentioned and entitled in the within notice, and that on the 28th day March, 1857, he made service of a copy of the within notice, and also a copy of the motion thereon referred to, by depositing the same duly enveloped, prepaid, and directed to Nelson Dewey, Cassville, Grant county, Wisconsin.

THOMAS SCOTT ANSLEY.

246 Subscribed and sworn to before me this 28th day of March, A. D. 1857.

RICHARD L. READ,
Justice of the Peace, Iowa County, Wisconsin.

Endorsed: Circuit Court, La Fayette county. State Bank of Illinois *ads.* Henry Corwith. April term, 1857. Motion to set aside sale on executions. Notice. Filed in open court April 21, 1857. D. W. Kyle, clerk. Filed Dec. 22, 1857. L. F. Kellogg, clerk S. C. Filed July 21, 1864. L. F. Kellogg, clerk S. C. Eaton & Crawford.

Circuit Court Lafayette county, Wisconsin, of April term, 1857.

Motion to set aside sale on executions.

THE STATE BANK OF ILLINOIS *ads.* HENRY CORWITH.

The motion made in this cause by the above-named defendant, by Samuel Crawford, attorney, to set aside the sale of real estate made upon the writ of fieri facias or execution issued in this case to the sheriff of the county of Grant, which bore date the 21st day of May, 1855, and which sales were made to Nelson Dewey, and notice of said motion having been duly served upon the said plaintiff, Henry Corwith, and upon the said Nelson Dewey, and the same having been argued by the parties, respectively, and it appearing to the court, now here, that no seal was attached to the execution upon which such sales were made, it is now by the court ordered and adjudged that said motion be, and the same is hereby, sustained, granted, and allowed, and the sale aforesaid made to the said Nelson Dewey, hereby vacated, set aside, annulled, and declared to be of no effect. And it is further ordered that the said Nelson Dewey pay the costs of said motion, to wit, the sum of ten dollars costs and disbursements, amounting in the whole to the sum of seventeen and 57-100 dollars, and that execution issue therefor.

247

Dated May 25th, A. D. 1857.

By the court.

M. M. COTHREN, *Circuit Judge.*

SAMUEL CRAWFORD, *Defendant's Attorney.*

Endorsed: The State Bank of Illinois *ads.* Henry Corwith. Order setting—sales to N. Dewey, Grant co. Filed May 28th, 1857, at 6 o'clock a. m. D. W. Kyle, clerk. Filed Dec. 22, 1857. L. F. Kellogg, clerk S. C. Filed July 21, 1864. L. F. Kellogg, clerk S. C.

248 STATE OF WISCONSIN, *La Fayette County, ss:*

L. P. Higbee, being duly sworn, says that on the 22nd day of June, 1857, he served the notice of which the within is a copy, and a copy of the within undertaking, on Samuel Crawford and Parley Eaton, attorneys for the within-named defendant, at Mineral Point, Iowa county, Wisconsin, by delivering to and leaving with each of them, respectively, copies thereof, and also on D. W. Kyle, esq., clerk of the Circuit Court for said La Fayette county, by delivering to and leaving with him copies thereof at his office, in Shullsburg, La Fayette county, Wisconsin; and further says not.

L. P. HIGBEE.

Subscribed and sworn to before me this 2nd day of Sept., 1857.

D. W. KYLE, *Clerk.*

Endorsed: Henry Corwith *vs.* The State Bank of Illinois. Action of N. Dewey. Filed Sept. 2nd, 1857. D. W. Kyle, clerk. Filed Dec. 22, 1857. L. F. Kellogg, clerk S. C. Filed July 21, 1864. L. F. Kellogg, clerk S. C.

249 Be it remembered that at a term of the Supreme Court of the State of Wisconsin, begun and held at the capitol in Madison, the seat of government of said State, on the third Tuesday, to wit, on the fifteenth day of June, A. D. 1858, on the forty-seventh day of the term, to wit, on the eleventh day of August, A. D. 1858, present, the Hon. Edward V. Whiton, chief justice, and the Hon. Abram D. Smith, and the Hon. Oramus Cole, associate justices of said court, the following proceedings were had, inter alia, to wit:

Appeal from Circuit Court.

HENRY CORWITH and NELSON DEWEY, appellants,
vs.
THE STATE BANK OF ILLINOIS, respondent.

LA FAYETTE COUNTY, *State of Wisconsin:*

This cause came on to be heard on appeal from the order of the Circuit Court of La Fayette county, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the order of the Circuit Court of La Fayette county, made on the 25th day of May, A. D. 1857, be, and the same is hereby, reversed, with costs to be taxed against the said respondent.

STATE OF WISCONSIN, *Supreme Court, ss:*

I, La Fayette Kellogg, clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true copy of the order and judgment of the court in the above-entitled cause, as appears of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, this 12th day of August, A. D.
250 1858.

[L. S.] LA FAYETTE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

Endorsed: Henry Corwith and Nelson Dewey, appellants, *vs.* The State Bank of Illinois, respondent. Remittitur. Filed Nov. 1st, 1861. J. S. Murphy, clerk. Filed July 21, 1864. L. F. Kellogg, clerk S. C.

Circuit Court La Fayette county.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

To the above-named defendant and its attorneys, and to David W. Kyle, esq'r, clerk of the Circuit Court for the county of La Fayette county:

Take notice that the said plaintiff, Henry Corwith, appeals to the Supreme Court of the State of Wisconsin, from the several orders made in this cause in favor of the said defendant, on the 25th day of May, 1857, setting aside and vacating the sales of real estate made

to the several purchasers, under and by virtue of the writs of fieri facias or execution, issued upon the judgment in this cause, to the sheriffs of the counties of La Fayette, Grant, and Iowa, re-
251 spectly, and that he appeals from the whole of said orders, and from each and every part thereof.

Dated June 18, 1857.

Yours, &c.,
JAMES H. KNOWLTON, &
CHARLES DUNN, *Att'ys for Pl'ff.*
HENRY CORWITH, *Plaintiff.*

Circuit Court La Fayette county.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

Whereas, on the 26th day of May, 1857, orders were made in the above-entitled cause in favor of the above-named defendant, setting aside and vacating the sales of real estate made by the sheriffs of La Fayette, Grant, and Iowa, respectively under and by virtue of the several writs of execution issued upon the judgment in this cause, and directed to the sheriffs of said counties, respectively, as to each and every of the purchasers at such sale respectively, and the said Henry Corwith, feeling himself aggrieved by said several orders, intends to appeal therefrom to the Supreme Court:

Now, therefore, we, Samuel H. Scales residing in New Diggings, and Solomon Oliver residing in White Oak Springs, in La Fayette county, Wisconsin, do hereby, pursuant to the statute in such case made and provided, undertake that said appellant will pay all costs and damages which may be awarded against him on said appeal, not exceeding two hundred and fifty dollars.

SAMUEL H. SCALES.
SOLOMON OLIVER.

252 COUNTY OF LA FAYETTE, *ss:*

On this 18th day of June, 1857, personally appeared before me Samuel H. Scales and Solomon Oliver, to me known to be the persons described in, and who executed the foregoing undertaking, and acknowledged to me that they executed the same for the uses and purposes therein specified.

M. HOLLISTER, *Justice of the Peace.*

COUNTY OF LA FAYETTE, *ss:*

Samuel H. Scales and Solomon Oliver, being severally duly sworn on oath each for himself, deposes and says that he is a resident of the State of Wisconsin, and is a freeholder and householder therein, and that he is worth over and above all debts by him owing, and all

responsibilities and liabilities by him incurred, and over and above all property exempt by law from execution or attachment.

SAMUEL H. SCALES.
SOLOMON OLIVER.

Subscribed and sworn before me this 18th day of June, 1857.

M. HOLLISTER,
Justice of the Peace.

Endorsed: Circuit Court. Henry Corwith *vs.* The State Bank of Illinois. Notice of appeal from the whole of the orders setting aside sales and undertaking. Filed June 22nd, 1857. D. W. Kyle, clerk. Filed July 21, 1864. S. F. Kellogg, clerk S. C.

253 Circuit Court La Fayette county, Wisconsin, October term, A. D. 1859, 9th day of the term.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

OCTOBER 31, 1859.

On this day came Samuel Crawford and Parley Eaton, attorneys for the State Bank of Illinois, and the said Crawford & Eaton, on behalf of the above-named defendant, moved this court to set aside the sales of real estate made by the sheriff of the county of La Fayette, by virtue of an execution issued upon the judgment heretofore rendered in this action, and support of said motion read to the court a certified copy of the judgment of the Supreme Court reversing the judgment of this court; also a certified copy of the judgment of non-suit in this case; also a certified copy of an order of this court, made at the April term of this court, in the year 1858, ordering the amendment of the execution issued in this case, by affixing the seal of the court thereto, and a certified copy of the execution issued to the sheriff of La Fayette county; the motion filed in this action; notice of this motion, and an affidavit of the service thereof on the said Henry Corwith, on the ninth day of July, 1858, all of which papers are hereto prefixed, and also a notice of the hearing of said motion for the term served on James H. Knowlton, one of the attorneys, for the said Henry Corwith, which notice with proof of same is also hereto annexed; they also read to the court proof of service of like notices on said James H. Knowlton for the purchasers of real estate at such sale.

And thereupon Charles Dunn and Joseph A. Sleeper, as attorneys and counsel for said Henry Corwith, and it was then made to appear to the court here, that the said James H. Knowlton and Charles Dunn were not, and that neither of them was attorney for any
254 of the purchasers other than Henry Corwith, and it further appearing by admission of the counsel that motions for rehearing of the appeals in the Supreme Court, taken from the former order of this court, setting aside said sales, were filed by the State

Bank of Illinois, after service of the motion papers on Henry Corwith, in July, 1858, the counsel for the said Henry Corwith objected to the hearing of said motions, for the following reasons, to wit:

1st. That said Dunn and Sleeper and Knowlton, not being attorneys for any purchasers other than Henry Corwith, service of notice of this motion on James H. Knowlton is not service upon any one except Corwith.

2nd. That as attorneys for Corwith they have a right to object to the making of any motion to set aside any of said sales.

3rd. That service of notice on purchasers cannot be made by mail, but must be made personally.

4th. Motions entitled State Bank of Illinois against any one not entitled in any case or action pending, or which was ever pending in this court, the action being Henry Corwith against the State Bank of Illinois.

5th. That no motion can be made to set aside said sale, untill all the purchasers are notified of the motion, and in that way given an opportunity of appearing in court, and protecting their rights.

255 6th. That the motion for reargument in the Supreme Court superceded their notice of motion and the motion papers filed in July, 1858, and that they cannot be made the basis of a motion at this time without being re-served with copies of the papers upon which the same would be founded.

Whereupon the court overruled the objections to the hearing of the motions, and ordered it to be heard, to which the counsel for Corwith excepted, and thereupon the counsel for Corwith read to the court, as a defense to the motion, the original execution issued to the sheriff of the county of La Fayette, with the seal of the court impressed thereon, in pursuance with the order of this court made at the April term, 1858, a copy of which was read to the court in support of the motions, with the certificate of the clerk of the time of affixing the same; a certified copy whereof is hereto annexed in place of the original. And after hearing the argument for and against the motion, the court took the same under consideration.

And afterwards, to wit, on the first day of November, 1859, as yet of October term, the said motion having been considered by the court, and due deliberation being thereupon had, it is ordered by the court here that the sale of real estate made to Henry Corwith by the sheriff of La Fayette county, under and by virtue of the execution issued upon the judgment heretofore entered in this case, and which was afterwards reversed by the Supremé Court, be set aside and vacated, for the reason and upon the ground that at the time said sale was made no seal was affixed to the said execu-

256 tions, and that the said Henry Corwith pay ten dollars as costs of this motion. And it is further ordered that upon appeal from this order to the Supreme Court the printed copies of papers read and filed by the said Crawford and Eaton in support of the motion be returned as original instead of certified copies, and that

such printed copies and the certified copies of the said execution and this original order constitute the return to the appeal instead of certified copies thereof.

November 1, 1859.

By the court:

M. M. COTHREN, *Judge*.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS. } Assumpsit.

The judgment heretofore entered in this case having been reversed by the Supreme Court, and the plaintiff having submitted to a nonsuit, after the same was remanded from said Supreme Court to this court for a new trial, and on motion of James H. Knowlton, attorney for the plaintiff, ordered that the plaintiff have leave to withdraw from the files of this court the certificate upon which this action was based.

April 20, 1860.

By the court:

M. M. COTHREN, *Judge*.

257 In La Fayette county, Wisconsin, Circuit Court.

On motion to set aside sheriff's sale.

HENRY CORWITH, plaintiff,
against
THE STATE BANK OF ILLINOIS, defendant.

STATE OF WISCONSIN, *County of Iowa, ss:*

George Henry, of the county of Iowa, in said State, clerk to Wm. T. Henry, one of the defendant's attorneys in this cause, being duly sworn, deposes and says, that on the 8th day of May, A. D. 1863, he served a copy of the affidavits of John Bracken, and order of the court substituting attorneys for said defendant in this case, on the said plaintiff, Henry Corwith, by delivering the same to him personally, in the city of Galena, in the State of Illinois, and leaving the same with him, and further saith not.

GEORGE HENRY.

Subscribed and sworn to before me, this 12th day of May, A. D. 1863.

GEO. L. FROST,
Circuit Court Com'r, Iowa Co., Wis.

In La Fayette county, Wisconsin, Circuit Court.

On motion to set aside sheriff's sale

HENRY CORWITH, plaintiff,
vs.
THE STATE BANK OF ILLINOIS, defendants.

STATE OF WISCONSIN, *County of Iowa, ss*:

William T. Henry, one of the attorneys for said defendant in this cause, being duly sworn, deposes and says, that on the 2nd day of May, 1863, he served a copy of the affidavits of John, and an order of the court substituting attorneys for said defendant in this case, and hereto annexed, upon Charles Dunn, James H. Knowlton, and Joseph A. Sleeper, the attorneys for said plaintiffs of record in this cause, by enclosing three copies of the same in three separate envelopes, and addressing or directing said envelopes, respectively, as follows: Hon. Charles Dunn, att'y and counselor-at-law, Belmont, La Fayette county, Wisconsin; James H. Knowlton, esq'r, att'y and counselor-at-law, Chicago, Ills.; Joseph A, Sleeper, esq'r, att'y
258 and counselor-at-law, Janesville, Wisconsin, and by putting each of said envelopes or letters so addressed in the United States post office, of the city of Mineral Point, in Iowa county, Wisconsin, and paying the postage thereon.

WILLIAM T. HENRY.

Subscribed and sworn to this 5th day of May, 1863.
[SEAL.] R. T. M. SMITH,
Notary Public for Wisconsin, residing in Iowa county.

In the Circuit Court in and for said county and State.

HENRY CORWITH, plaintiff,
vs.
THE STATE BANK OF ILLINOIS, defendant.

STATE OF WISCONSIN, *County of La Fayette, ss*:
[STATE OF WISCONSIN, *County of La Fayette, ss*:]

John Bracken, of said county and State, being duly sworn, doth depose and say, that Samuel Crawford and Parley Eaton, the attorneys of record for said defendant in the above-entitled cause, are both deceased; that he, the said Bracken, is acting agent for the trustees of said defendant, the State Bank of Illinois, and attending to and doing business for them in the State of Wisconsin, and particularly in relation to the above-entitled suit, and that Moses M. Strong and William T. Henry have been retained as the attorneys for said defendant, in place and stead of their attorneys aforesaid deceased, and further saith not.

JOHN BRACKEN.

Sworn to and subscribed before me this 16th day March, A. D. 1863.
[L. S.] GEORGE HENRY,
Notary Public for Wisconsin, residing in Iowa county.

259 In the Circuit Court in and for the said county and State.

HENRY CORWITH, plaintiff,
against
THE STATE BANK OF ILLINOIS, defendant.

259 STATE OF WISCONSIN, *County of La Fayette*:

On reading the affidavit of John Bracken, agent for the trustees of said defendant, the State Bank of Illinois, showing that Messrs. Eaton & Crawford, the attorneys for said defendant of record in this cause, are both deceased; and also showing that Moses M. Strong and Wm. T. Henry have been retained as attorneys for said defendant in place or stead of said deceased.

Now therefore it is ordered, that the names of the said Moses M. Strong and Wm. T. Henry be and the same are hereby substituted as the attorneys of record for said defendant in the above-entitled cause, in place and stead of said deceased.

Mineral Point, Wis., March 16, 1863.

M. M. COTHREN,
Circuit Judge.

Endorsed: Circuit Court, La Fayette co. Henry Corwith *vs.* The State B'k of Ills. Substituting att'ys. Filed May 26, 1863, in open court. J. S. Murphy, clerk. Filed Jan'y 13, 1864. L. F. Kellogg, clerk, S. C. Moses M. Strong, Wm. T. Henry residing at Mineral Point, Wis. Att'ys for def'ts.

260 In the Circuit Court in and for the said county in said State, to May term, A. D. 1863.

HENRY CORWITH, plaintiff,
vs.
THE STATE BANK OF ILLINOIS, defendant.

STATE OF WISCONSIN, *La Fayette County, ss*:

To the above-named plaintiff or his attorneys, and Charles L. Stephenson, George W. Field, executors of the estate of William Field, deceased, Cyrus Woodman, Solomon Oliver, Samuel Scales, J. S. Kelso, James H. Earnest, John Thompson, Daniel Grems, S. W. Fulp, John Lees, John March, John Griffin, Nelson Dewey, Julius Augustine, William Roberts, Edward Warrington, Benjamin M. Coates, Wm. McGonigal, John Ross, Asa Dimock, administrator of the estate of La Fayette G. Dimock, deceased, Jane Wren, executrix of the last will and testament of John J. Wrem, deceased, Minor, Bennett, O. E. Barber, Jacob Hagar, Samuel Aldred, Robert Ring, and Nicholas Husk :

You are hereby notified that this court will be moved, on behalf of said defendant, at the court-house, in the village of Darlington, in said county and State, on the 25th day of May, A. D. 1863, or as soon there-

after as counsel can be heard upon the annexed affidavits and exhibits thereto attached, copies whereof are herewith served upon you, and upon the papers and proceedings on file and of record in this cause in said court, for an order setting aside, annulling and vacating all sales of real estate (except those made to said plaintiff) made
261 upon and by virtue of those pretended executions issued to the sheriff of La Fayette, Grant, and Iowa counties, on the judgments rendered in this cause against said defendant, and quashing said pretended executions, and declaring the same and the sale of all real estate made under them void and of no effect, for the reasons following, to wit:

First. Because the judgment in this case rendered in the Circuit Court of La Fayette county, and upon which the said executions were issued, has been by the Supreme Court of the State of Wisconsin vacated, set aside, reversed and wholly for nothing estemed and therefore by virtue of the statutes of Wisconsin, the purchasers of said real estate have no right to have or obtain a title to the same, and said purchasers have by said statutes a right to recover against said plaintiff for the amount by them respectively paid upon such purchases with interest.

Second. Because said parties purchasing at said sale had notice before and at the time of said sales that said cause wherein judgment had been rendered, and upon which judgment said executions were issued, had been appealed to, and was then pending in the Supreme Court of the State of Wisconsin, that the said judgment would, in all probability, be set aside, and the said sales held for naught, and that said purchasers are therefore not entitled to any protection as innocent purchasers.

Third. Because neither before, not at the time of said sales, nor since, has there ever been any transcript of the record of said judgment filed, entered, or docketed in the office of the clerks of the
262 Circuit Court in and for the said counties of Iowa and Grant, or either of them, as is required by law, and therefore said pretended executions issued to the sheriffs of Grant and Iowa counties are absolutely void.

Fourth. Because the papers purporting to be executions, issued on the judgment in this case to the counties of La Fayette, Grant, and Iowa, were, when issued, and when said sales were made, without the seal of said court, and being then and there unsealed, were void, and the sales made by virtue thereof are therefore void, and ought to be set aside.

Fifth. Because said suit, having been commenced by attachment of the real estate of said defendant, the said pretended executions should have directed the said sheriffs to sell the interest said defendant had in said attached real estate at the date of the attachment, and afterwards or else at the date of the judgement or afterwards, neither of which was directed by said writs, but they each directed the said sheriffs, if goods and chattels could not be found, to make the money out of the lands, &c., whereof said defendant was seized on the 19th day of October, 1853, or afterward, which date is neither

the date of the attachment or judgment, nor do said writs mention or state that any property whatever had been attached in said cause.

Sixth. Because the sheriff levied upon, advertized, and sold the interest said defendant had in said real estate on the 19th day of October, 1853, and afterwards, *or which said defendant would have had had said defendant not ceased to act as a body corporate*; said
263 date being neither the date of the attachment or judgment in this cause, and inserted said words in italics, in their advertisement, without authority of law therefor, to the damage and prejudice of said defendant.

Seventh. Because said sheriff did not offer said real estate for sale in separate lots, tracts, or parcels, as required by law, but sold the same in large tracts, as appears by their return.

Eighth. Because the several advertizements of said real estate in several respects were not in accordance with law, especially in there being no proof of the posting up of notices of said sales in the several towns where the lands lie, nor in the towns where the lands were sold, and if such notices were posted, there is no proof that said notices described the property with common certainty as required by law and in other respects.

Ninth. Because the sheriff's returns upon said pretended executions are insufficient and imperfect in many respects, especially in that the returns upon the writ, directed to the sheriff of Iowa county, does not show that there was not sufficient personal property of the defendant upon which to levy, and from which to make the amount named in the writ, and in other respects.

Tenth. Because at the time of issuing said writs of execution, directed to the sheriffs of Iowa and Grant counties, respectively, to wit, on the 21st day of May, 1855, the said writ of execution directed to the sheriff of La Fayette county, bearing date the 23rd day of
264 April, 1855, had not been returned by said sheriff of La Fayette county, and, the said last writ being returnable on the 3rd Monday of October, 1855, the time at which the same was returnable had not expired when said writs directed to the sheriffs of Iowa and Grant counties were tested and issued, and it did not and could not appear or be known whether said judgment would be satisfied by virtue of said first execution, directed to the sheriff of La Fayette county.

Eleventh. Because no full and sufficient certificates of said sales in La Fayette county, duly authenticated, have been made out and filed in the register of deeds' office within ten days after said sale, as the law requires.

Twelfth. Because said sales to William Field purport by the certificates filed in the register of deeds office to have been made on October 13th, 1855, no mention or return whatever being made by the sheriff of any such sale except the proof of publication of an advertisement, and which proof does not show that the notices of adjournment were ever published according to law, the sale in said La Fayette county having been made on July 23rd, 1855.

Thirteenth. Because the sale to John Griffin by the sheriff of La

Fayette county was never consumated, he never having called on the sheriff for his certificate of sale, or paid the money bid therefor, and no certificate of said sale having ever been filed in the register of deeds' office.

Fourteenth. Because the notice or advertisement of said sale in Grant county to John Ross was not given or published accord-
265 ing to law, the publication having expired on August 13th, 1855, more than a week before [before] the day of sale, to wit, the twenty-first day of August, 1855, and the notice of the adjournment to August 30th, 1855, being entirely insufficient, the same not having been posted at all, nor made out until August 22, 1855, and not published until the 27th day of August, 1855.

Fifteenth. Because there was insufficient notice or advertizement of the other sales in Grant county, the sales being made on July 31st, 1855, and the publication of the notice of sale ending on July 9th, 1855, is not six weeks previously, as required by law.

Sixteenth. Because said pretended execution to the sheriff of Iowa county was not returned within six days after the return day thereof, and was not returned until May 27th, 1857.

Seventeenth. Because of divers other imperfections, illegallities, and omissions of duty, in the form of said executions, levy, publication, and sales aforesaid, which are apparent on the record, writ, and return.

And granting such further or other relief as shall be just and proper, with the costs of this motion.

Dated Mineral Point, Wisconsin, April 27, 1862.

Yours, &c.,

STRONG & HENRY,
Attorneys for Defendants.

266 In the Circuit Court in and for the said county, in said State, at Nov. term, A. D. 1863.

HENRY CORWITH, plaintiff,
vs.
THE STATE BANK OF ILLINOIS, defendant.

STATE OF WISCONSIN, *La Fayette County, ss*:

To the above-named plaintiff or his attorneys, and to Charles L. Stephenson, George W. Field, executor of the estate of William Field, deceased, Cyrus Woodman, Solomon Oliver, Samuel Scales, J. S. Kelso, James H. Earnest, John Thompson, Daniel Grems, S. W. Fulp, John Leece, John March, John Griffin, Nelson Dewey, Julius Augustine, William Roberts, Edward Warrington, Benjamim M. Coates, William McGonigal, John Ross, Asa Dimock, administrator of the estate of La Fayette G. Dimock, deceased, Jane Wren, executrix of the last will and testament of John J. Wren, deceased, Minor Bennett, O. E. Barber, Jacob Hagar, Samuel Aldred, Robert King, and Nicholas Husk:

Notice of the motion in this cause for an order setting aside, annulling and vacating all sales of real estate, (except those made to

said plaintiff,) made upon and by virtue of the three pretended executions issued to the sheriffs of La Fayette, Iowa, and Grant counties, on the judgment rendered in this cause against the said defendant, and quashing said pretended executions, and declaring the same and the sales of all real estate made under them void and of no effect, together with copies of the affidavits and exhibits attached to said motion, having been duly served upon all of the above-named
267 parties to said motion, (except the said Daniel Grems,) and also upon the attorneys of said plaintiff, as appears by the affidavit of George Henry, dated May 16, 1863, and of William T. Henry dated May 5, 1863, and attached to said motion; and the said motion having come on to be heard, as to all of said parties so served, at the May term, 1863, of said court upon tha affidavits and exhibits attached to said motion, and upon the papers and proceedings on file and of record in this cause, in this court, and on the matters of fact submitted in opposition to said motion, and the court having then heard said motion and the argument of counsel thereon, as well Messrs. Strong and Henry, on behalf of said defendant, The State Bank of Illinois, as Messrs. Dunn, Knowlton and Sleeper, on behalf of said plaintiff, Henry Corwith, and the parties so served, defendants to said motion, and the court not being sufficiently advised of and concering its opinion, took time to consider thereof, and now at this time, to wit, the November term, 1863, of said court, the court having considered of its opinion and being now sufficiently advised thereof, doth order, adjudge and that the said motion, as to the following described tracts of land, to wit:

Und. ⅓ of W. half of N.E. qr.	section 8,	town 2,	range 5	east.
E. half N.W. qr.	" 33,	" 2,	" 4	"
Fraction No. 1.	" 33,	" 2,	" 4	"
Und. E. half of S.W. qr.	" 19,	" 3,	" 1	"

situated in said La Fayette county, Wisconsin, and the

Und. E. half of S.W. qr.	section 30,	town 2,	range 2	west
and N.W. qr.	" 32,	" 3,	" 3	"

situated in Grant county Wisconsin, and the

268 E. half of S.E. qr.	section 10,	town 4,	range 2	east
Und. qr. of S.E. qr.	" 8,	" 8,	" 1	"
Und. E. half S.W. qr.	" 8,	" 8,	" 1	"
" half N.E. qr.	" 17,	" 8,	" 1	"
" half E. half N.W. qr.	" 17,	" 8,	" 1	"

situated in the county of Iowa, Wisconsin, and for which tracts no deeds had been made by the sheriffs upon the sales aforesaid at the time of serving said motion, be sustained, and the said sales of the tracts of land above described are hereby set aside, annulled and vacated, and the court doth further order, adjudge and decree that the said motion as to the following described tracts of land, to wit:

W. half of S.W. qr.	section 22,	town 2,	range 1	east
S. part of E. half of N.W. qr.	" 18,	" 3,	" 1,	"
W. half of S.E. qr.	" 28,	" 4,	" 1,	"
S.W. qr.	" 33,	" 4,	" 1,	"

E. half of S.W. qr.	section	31,	town	1,	range	2, east
W. half of S.W. qr.	"	31,	"	1,	"	2, "
E. half of N.E. qr.	"	31,	"	1,	"	2, "
S.E. qr.	"	31,	"	1,	"	2, "
E. half of N.E. qr.	"	32,	"	1,	"	2, "
W. half of S.W. qr.	"	32,	"	1,	"	2, "
E. half of S.E. qr.	"	32,	"	1,	"	2, "
W. half of S.E. qr.	"	32,	"	1,	"	2, "
N.E. frac. No. 4, S.W. qr.	"	33,	"	2,	"	4, "
W. half " " 5, S.E. qr.	"	33,	"	2,	"	4, "
E. half of S.W. qr.	"	31,	"	3,	"	4, "
Und. one-third of W. half of N.W. qr.	"	9,	"	2,	"	5, "
E. half of S.E. qr.	"	31,	"	2,	"	5, "
W. half S.E. qr.	"	31,	"	2,	"	5, "
W. half of S.W. qr.	"	32,	"	2,	"	5, "
E. half of N.W. qr.	"	35,	"	2,	"	5, "
W. half of S.E. qr.	"	36,	"	2,	"	5, "
Und. half of W. half of S.W. qr.	"	29,	"	3,	"	5, "
" half of N.W. qr.	"	33,	"	4,	"	5, "
" N.W. qr. of N.E qr.	"	33,	"	4,	"	5, "

situated in the county of La Fayette, Wisconsin, and the

269 E. half of S.E. qr.	section	15,	town	2,	range	1 west
E. half of S.W. qr.	"	26,	"	4,	"	1 "
S.W. qr. of N.E. qr.	"	26,	"	4,	"	1 "
W. half of N.E. qr.	"	5,	"	1,	"	2 "
W. half of S.E. qr.	"	5,	"	1,	"	2 "
E. half of S.W. qr.	"	5,	"	1,	"	2 "
E. half of S.E. qr.	"	34,	"	2,	"	2 "
E. half of S.W. qr.	"	34,	"	2,	"	2 "
N.W. qr.	"	19,	"	8,	"	2 "
S.E qr. of S.W. qr.	"	2,	"	2,	"	3 "
W half of S.E. qr.	"	13,	"	8,	"	3 "
S.W. qr.	"	11,	"	3,	"	5 "
Und. half of north half	"	17,	"	3,	"	5 "
" half of W. of S.W. qr.	"	17,	"	3,	"	5 "
S.E. qr.	"	4,	"	2,	"	3 "
E. half of S.W. qr.	"	4,	"	2,	"	3 "
N.E. qr. of N.W. qr. frac. qr.	"	9,	"	2,	"	3 "
S. frac. of N.W. qr.	"	9,	"	2,	"	3 "
W. half of S.W. qr.	"	17,	"	8,	"	2 "
S.W. qr.	"	33,	"	3,	"	3 "
S.E. qr.	"	32,	"	3,	"	3 "

situated in the county of Grant, Wisconsin, and for which last-mentioned tracts deeds had been made by the sheriffs upon the sales aforesaid at the time of serving said motion, be, and the same is hereby, overruled; and it is also further considered, ordered and adjudged by the court, that each of said parties, to wit, The said plaintiff, Henry Corwith, and the said defendant, the State Bank of Illi-

nois, do respectively pay one-half part share of the costs of said motion to be taxed herein.

Dated November 11, A. D. 1863.

By the court:

M. M. COTHREN, *Judge.*

270 Endorsed: La Fayette co., Wis. Circuit Court. Henry Corwith *vs.* The State Bank of Illinois. Judgment of the court on motion to set aside sheriff's sales. November term, 1863. Filed in open court, Nov. 11, 1863. J. S. Murphy, clerk. Filed Jan'y 13, 1864. L. F. Kellogg, clerk S. C. Strong & Henry, att'ys for State Bank of Illinois.

Be it remembered that a term of the Supreme Court of the State of Wisconsin, begun and held at the capitol in Madison, the seat of government of said State, on the third Tuesday, to wit, on the twenty-first day of June, A. D. 1864, on the forty-second day of the term, to wit, on the sixth day of December, A. D. 1864, present, the Hon. Luther S. Dixon, chief justice, and Hon. Orsamus Cole and the Hon. Byron Paine, associate justices of said court, the following proceedings were had inter alia, to wit:

Appeal from the Circuit Court.

HENRY CORWITH, CHARLES L. STEPHENSON, Cyrus Woodman, Solomon Oliver, Samuel Scales, J. S. Kelso, James H. Earnest, John Thompson, John Leece, John March, John Griffin, Nelson Dewey, Julius Augustine, Benjamin M. Coates, Wm. McGonigal, and John Ross, appellants,

vs.

THE STATE BANK OF ILLINOIS, respondent.

STATE OF WISCONSIN, *La Fayette County*:

271 This cause came on to be heard on appeal from the order of the Circuit Court of La Fayette county, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court, that that part of the order of the Circuit Court of La Fayette county, made on the 11th day of November, A. D. 1863, which sets aside some of the sales made upon and by virtue of executions issued herein, and also that part of the order which adjudged that the said Henry Corwith should pay one-half of the costs of said motion in this cause, be and the same is hereby reversed, with costs to be taxed against the said respondend.

Supreme Court.

STATE OF WISCONSIN, *ss*:

I, La Fayette Kellogg, clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true copy of the order and judgement of the court in the above-entitled cause, as appears of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, this 10th day of December, A. D. 1864.

[SEAL.] LA FAYETTE KELLOGG,
Clerk of the Supreme Court, State of Wisconsin.

Endorsed: State of Wisconsin. Supreme Court. Henry Corwith *et al.*, appellants, *against* The State Bank of Illinois, respondent. Remittitur. Filed Feb'y 2nd, 1865. J. S. Murphy, clerk.

272 Be it it remembered that at a term of the Supreme Court of the State of Wisconsin, begun and held at capitol, in Madison, the seat of government of said State, on the third Tuesday, to wit, on the twenty-first day of June, A. D. 1864, on the forty-second day of the term, to wit, on the sixth day of December, A. D. 1864, present, the Hon. Luther S. Dixon, chief justice, and the Hon. Orsamus Cole and the Hon. Byron Paine, associate justices of said court, the following proceedings were had inter alia, to wit:

Appeal from Circuit Court.

HENRY CORWITH, CHARLES L. STEPHENSON, Cyrus Woodman, Solomon Oliver, Samuel Scales, J. S. Kelso, James H. Earnest, John Thompson, John Leece, John March, John Griffin, Nelson Dewey, Julius Augustine, Benjamin M. Coates, William McGonigal, and John Ross, respondents,

vs.

THE STATE BANK OF ILLINOIS, appellant.

STATE OF WISCONSIN, *La Fayette County*:

This cause came on to be heard on appeal from the order of the Circuit Court of La Fayette county, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court, that that part of an order of the Circuit Court of La Fayette county, made on the 11th day of November, A. D. 1863, which partly overruled the motion made by the State Bank of Illinois to set aside certain execution sales, and also that part of said order which adjudged that the State Bank of Illinois should pay one-half of the costs of said motion in this cause, be and the same is hereby affirmed, with costs to be taxed against the said appellant.

273 Supreme Court.

STATE OF WISCONSIN, *ss*:

I, La Fayette Kellogg, clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true copy of the order and judgment of the court in the above-entitled cause, as appears of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, this tenth day of December, A.D. 1864.

[L. S.] LA FAYETTE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

Endorsed: State of Wisconsin. Supreme Court. Henry Corwith *et al.*, respondents, *against* The State Bank of Illinois, appellant. Remittitur. Filed Feb'y 2nd, 1865. J. S. Murphy, clerk.

274 Circuit Court La Fayette county, to April term, 1857.

Motion.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

STATE OF WISCONSIN, *County of La Fayette, ss*:

And now comes the said defendant, The State Bank of Illinois, by Eaton and Crawford, attorneys, and moves the court to set aside the sales of real estate made upon the writ of fieri facias, or execution, issued in this case to the sheriff of the county of La Fayette, in the tate of Wisconsin, for the following reasons, to wit:

1st. Because the judgment in this case rendered in the Circuit Court of La Fayette county, and upon which the said execution was issued, has been, by the Supreme Court of the State of Wisconsin, vacated, set aside, reversed, and wholly for nothing esteemed, and therefore, by virtue of the statute of Wisconsin, the purchasers of said real estate have no right to obtain a title to the same. and said purchasers have by said statute a right of recovery against said plaintiff for the amounts by them respectively paid upon said purchases, with interest.

2d. Because the sales aforesaid have not been made in accordance with the laws of Wisconsin concerning sales on execution, nor was there full and sufficient notices of said sales.

3d. Because no full and sufficient certificates of such sales, duly authenticated, have been made out and filed as the law requires.

4th. Because the return upon said writ is insufficient and imperfect in many respects, and especially in that it does not show that there was not sufficient personal property of the defendant on which to levy and from which to make the amount named in the writ.

5th. Because of divers other imperfections, illegalities, and omissions of duty in the levy, publication, and sales aforesaid, which are apparent on the record, writ, and return.

PARLEY EATON and
SAMUEL CRAWFORD,
Attorneys for Defendant.

275 Circuit Court La Fayette county, to April term, 1857.

Copy of notice.—Motion to set aside sales on execution.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

STATE OF WISCONSIN, *County of La Fayette, ss:*

To the above-named plaintiff, Henry Corwith, and his attorneys, and to James H. Earnest:

You are hereby notified that a motion, with a copy of which accompanying this notice you are now served, will be brought up for argument at the next term of the Circuit Court in and for the county of La Fayette, to be begun and held at the court-house in Shullsburg, in said county, on the third Monday of April next, to wit, the 20th day of April, A. D. 1857, the same being the first day of said term, or as soon thereafter as counsel can be heard, the object of which motion is to set aside, annul and vacate the sales of real estate made upon and by virtue of the executions issued upon the judgment rendered in the above-entitled cause in the said Circuit Court. The said motion is based upon the records, writs and returns thereto pertaining to the said cause in the Supreme Court of the State of Wisconsin, and in the said Circuit Court of La Fayette county.

Yours, respectfully,

EATON & CRAWFORD,
Att'ys for Defendant.

Dated March 31, 1857.

276 STATE OF WISCONSIN, *County of Iowa, ss:*

Samuel Crawford, being duly sworn, deposes and says that he is one of the attorneys of the defendant in the cause mentioned and entitled in the within notice, and that of the 31st day of March, 1857, he made service of a copy of the within notice, and also of a copy of a motion therein referred to, by depositing the same in the post office, duly enveloped, prepaid, and directed to Hon. James H. Earnest, New Diggins, Wisconsin; and further says not

SAM. CRAWFORD.

Subscribed and sworn to before me this 6th day of March, A. D. 1857.

RICHARD L. READ,
Justice of the Peace, Iowa Co., Wis.

Endorsed: Filed in open court April 21, 1857. D. W. Kyle, clerk. Filed July 21, 1864. L. F. Kellogg, clerk S. C.

277 Circuit Court La Fayette county, Wisconsin, of April term, 1857.

Motion to set aside sales on execution.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

The motion made in this cause by the above-named defendant, by Samuel Crawford, attorney, to set aside the sale of real estate made upon the writ of fieri facias or execution, issued in this case to the sheriff of the county of La Fayette, which writ bore date the 23d day of April, 1855, and which sale was made to James H. Earnest, and notice of said motion having been duly served upon the said plaintiff, Henry Corwith, and also upon said James H. Earnest, and the same having been argued by the attorneys of the parties respectively, and it appearing to the court, now here, that no seal was attached to the execution upon which such sale was made, it is now by the court ordered and adjudged that said motion be, and the same is hereby, sustained, granted and allowed, and the sale aforesaid made to the said James H. Earnest, hereby vacated, set aside, annulled, and declared to be of no effect.

And it is further ordered that the said James H. Earnest pay the costs of said motion, to wit, the sum of ten dollars, costs and disbursements, amounting in the whole to the sum of seventeen 57-100 dollars, and that execution issue therefor.

Dated May 25th, A. D. 1857.

By the court.

M. M. COTHREN, *Circuit Judge.*
SAMUEL CRAWFORD, *Defendant's Attorney.*

278 Endorsed: State Bank of Illinois *vs.* Henry Corwith. Order setting aside sale to James H. Earnest, La Fayette co. Filed May 28, 1857, at 6 o'clock a. m. D. W. Kyle, clerk. Filed July 21, 1864. L. F. Kellogg, clerk S. C.

279 Circuit Court La Fayette county, Wisconsin.

HENRY CORWITH
versus
THE STATE BANK OF ILLINOIS.

To the above-named defendant and its attorneys, and to David W. Kyle, esq., clerk of the Circuit Court in and for the county of La Fayette:

Take notice that the above-named plaintiff, Henry Corwith, and James H. Earnest, appeal to the Supreme Court from the order made in this cause on the 25th day of May, 1857, in favor of the said defendant, setting aside and vacating the sale of real estate made by the sheriff of the county of La Fayette to the said James H. Earnest,

under and by virtue of the writ of fieri facias or execution, issued in this cause, dated on the 23rd day of April, 1855, and directed and delivered to the sheriff of the county of La Fayette. And you will further take notice that they appeal from the whole of said order and from every part thereof.

Dated June 18, 1857.

Yours, &c.,

JAMES H. KNOWTON & CHALES DUNN,
Pl'ff's Att'y.

HENRY CORWITH, *Plaintiff.*
JAMES H. EARNEST, *Purchaser.*

Circuit Court La Fayette county.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

Whereas on the 25th day of May, 1867, an order was made in the above-entitled cause in favor of the above-named defendant, setting aside and vacating the sales of real estate made by the sheriff of the county of La Fayette to James H. Earnest, under and by virtue of the writ of fieri facias or execution, issued in this cause, and directed and delivered to the said sheriff of the county of La Fayette aforesaid; and the said plaintiff and James H. Earnest, the said purchaser, feeling themselves aggrieved by the said order, intend to appeal therefrom to the Snpreme Court: Now, therefore, we, Samuel H. Scales, residing in White Oak Springs, and Solomon Oliver, residing in New Diggins, both in La Fayette county, Wisconsin, do hereby, pursuant to the statute in such case made and provided, undertake that said appellants will pay all costs and damages which may be awarded against them on said appeal, not exceeding two hundred and fifty dollars.

SAMUEL H. SCALES.
SOLOMON OLIVER.

COUNTY OF LA FAYETTE, *ss*:

On this 18th day of June, 1857, personally appeared before me Samuel H. Scales and Solomon Oliver, to me known to be the persons described in and who executed the foregoing undertaking, and acknowledged to me that they executed the same for the uses and purposes therein specified.

M. HOLLISTER.
Justice of the Peace.

COUNTY OF LA FAYETTE, *ss*:

Solomon Oliver and Samuel H. Scales, being severally duly sworn on oath, each for himself, deposes and says that he is a resident of the State of Wisconsin, and is a freeholder and householder therein; and that he is worth more than five hundred dollars over and above

all debts by him owing, and all responsibilities and liabilities by him incurred, and over and above all property exempt by law from execution or attachment.

SAMUEL H. SCALES.
SOLOMON OLIVER.

Subscribed and sworn before me this 18th day of June, 1867.
M. HOLLISTER,
Justice of the Peace.

280 Endorsed: Circuit Court. Henry Corwith *vs.* State Bank of Illinois. Notice of appeal from order setting aside sale to James H. Earnest, and undertaking. Filed June 22, 1857. D. W. Kyle, clerk. Filed July 21, 1864. L. F. Kellogg, clerk S. C.

281 STATE OF WISCONSIN, *La Fayette County, ss:*

L. P. Higbee, being duly sworn, says that on the 22d day of June, 1857, he served the notice of which the within is a copy, and a copy of the within undertaking on Samuel Crawford and Parley Eaton, attorneys for the within-named defendant, at Mineral Point, Iowa county, Wisconsin, by delivering to and leaving with each of them, respectively, copies thereof, and also on D. W. Kyle, esq., clerk of the Circuit Court for said La Fayette county, by delivering to and leaving with him copies thereof at his office in Shullsburg, La Fayette county, Wisconsin; and further says not.

L. P. HIGBEE.

Subscribed and sworn to before me this 2d day of Sept., 1857.
D. W. KYLE, *Clerk.*

282 Circuit Court La Fayette county, to April term, 1857.

Motion.

STATE OF WISCONSIN, *La Fayette County, ss*:

And now comes the said defendant, the State Bank of Illinois, by Eaton and Crawford, attorneys, and moves the court to set aside the sales of real estate made upon the writ of fieri facias or execution, issued in this case to the sheriff of the county of La Fayette, in the State of Wisconsin, for the following reasons, to wit:

1st. Because the judgment in this case, rendered in the Circuit Court of La Fayette county, and upon which the said execution was issued, has been, by the Supreme Court of the State of Wisconsin, vacated, set aside, reversed, and wholly for nothing esteemed; and, therefore, by virtue of the statute of Wisconsin, the purchasers of said real estate have no right to obtain a title to the same, and said purchasers have by said statute a right of recovery against said plaintiff for the amounts by them, respectively, paid upon said purchases, with interest.

2d. Because the sales aforesaid have not been made in accordance with the laws of Wisconsin concerning sales on execution, nor was there full and sufficient notices of said sales.

3d. Because no full and sufficient certificates of such sales, duly authenticated, have been made out and filed, as the law requires.

4th. Because the return upon said writ is insufficient and imperfect in many respects, and especially in that it does not show that there was not sufficient personal property of the defendant on which to levy, and from which to make the amount named in the writ.

5th. Because of divers other imperfections, illegalities and omissions of duty in the levy, publication and sales aforesaid, which are apparent on the record, writ and return.

PARLEY EATON & SAMUEL CRAWFORD,
Attorneys for Defendant.

283 Circuit Court La Fayette county, to April term, 1857.

Motion to set aside sales on execution.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

STATE OF WISCONSIN, *County of La Fayette, ss*:

To the above-named plaintiff, Henry Corwith, and his attorneys, and to Cyrus Woodman, one of the purchasers at sale on execution in the above case:

You are notified that a motion, with a copy of which, accompanying this notice, you are now served, will be brought up for argument at the next term of the Circuit Court in and for the county of La Fayette, to be begun and held at the court-house in Shullsburg, in said county, on the third Monday of April next, to wit, the 20th day of April, A. D. 1857, the same being the first day of said term, or as soon thereafter as counsel can be heard; the object of which motion is to set aside, annul and vacate the sales of real estate made upon and by virtue of the executions issued upon the judgment rendered in the above-entitled cause in the said Circuit Court. The said motion is based upon the records, writs and returns thereto, pertaining to the said cause in the Supreme Court of the State of Wisconsin and in the said Circuit Court of La Fayette county.

Yours, respectfully,
EATON & CRAWFORD,
Att'ys for Defendant.

Dated March 30, 1857.

284 STATE OF WISCONSIN, *County of Iowa, ss*:

Thomas Scott Ansley, being duly sworn, deposes and says, that he is a law student in the office of Samuel Crawford, one of the attorneys for the defendant, in the cause mentioned and entitled in the within notice, and that on the 30th day of March, 1857, he made

service of a copy of the within notice, and also of a copy of the motion therein referred to, by depositing the same in the post office at Mineral Point, duly prepaid, enveloped and directed to Cyrus Woodman, Min. Point; and further says not.

THOMAS SCOTT ANSLEY.

Subscribed and sworn to before me this 30th day of March, A. D. 1857.

RICHARD L. READ,
Justice of the Peace, Iowa Co., Wis.

Endorsed: Filed April 21, 1857. D. W. Kyle, clerk. Filed July 21, 1864, L. F. Kellogg, clerk, S. C.

285 Circuit Court La Fayette county, Wisconsin, of April term, 1857.

Motion to set aside sales on execution.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

The motion made in this cause by the above-named defendant, by Samuel Crawford, attorney, to set aside the sale of real estate made upon the writ of fieri facias or execution, issued in this case to the sheriff of the county of La Fayette, which writ bore date the 23rd day of April, 1855, and which sale was made to Cyrus Woodman, and notice of said motion having been duly served upon the said plaintiff, Henry Corwith, and also upon said Cyrus Woodman, and the same having been argued by the attorneys of the parties respectively, and it appearing to the court, now here, that no seal was attached to the execution upon which sale was made, it is now by the court ordered and adjudged that said motion be and the same is hereby sustained, granted and allowed, and the sale aforesaid made to the said Cyrus Woodman hereby vacated, set aside, annulled, and declared to be of no effect. And it is further ordered that the said Cyrus Woodman pay the costs of said motion, to wit, the sum of ten dollars, cost, and disbursements, amounting, in the whole, to the sum of seventeen 67-100 dollars, and that execution issue thereof.

Dated May 25th, 1857.

By the court:

M. M. COTHREN, *Circuit Judge.*
SAMUEL CRAWFORD,
Defendant's Attorney.

286 State Bank of Illinois ads. Henry Corwith. Order setting aside sale to Cyrus Woodman, La Fayette Co. Filed May 28th, 1857, at 6 o'clock, a. m. D. W. Kyle, clerk. Filed July 21, 1864. L. F. Kellogg, clerk, S. C.

291 Circuit Court La Fayette county. Wisconsin.

HENRY CORWITH
versus
THE STATE BANK OF ILLINOIS.

To the above-named defendant, and its attorneys, and to David W. Kyle, esq., clerk of the Circuit Court in and for the county of La Fayette:

Take notice that the above-named plaintiff, Henry Corwith and Cyrus Woodman, appeal to the Supreme Court from the order made in this cause on the 25th day of May, 1857, in favor of the said defendant, setting aside and vacating the sale of real estate made by the sheriff of the county of La Fayette to the said Cyrus Woodman, under and by virtue of the writ of fieri facias, or execution, issued in this cause dated on the 23rd day of April, 1855, and directed and delivered to the sheriff of the county of La Fayette. And you will further take notice that they appeal from the whole of said order and from every part thereof.

Dated June 18, 1857.

Yours, &c.,
JAMES H. KNOWTON and
CHARLES DUNN, *Pl'ff's Att'y.*
HENRY CORWITH, *Plaintiff.*
CYRUS WOODMAN, *Purchaser.*

Circuit Court La Fayette county.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

Whereas on the 25th day of May, 1857, an order was made in the above-entitled cause, in favor of the above-named defendant, setting aside and vacating the sales of real estate made by the sheriff of the county of La Fayette to Cyrus Woodman, under and by virtue of the writ of fieri facias or execution issued in this cause, and directed and delivered to the said sheriff of the county of La Fayette aforesaid, and the said plaintiff and Cyrus Woodman, the said purchaser, feeling themselves aggrieved by the said order, intend to appeal therefrom to the Supreme Court: Now, therefore, we, Samuel H. Scales, residing in White Oak Springs, and Solomon Oliver, residing in New Diggings, both in La Fayette county, Wisconsin, do hereby, pursuant to the statute in such case made and provided, undertake, that said appellants will pay all costs and damages which may be awarded against them on said appeal, not exceeding two hundred and fifty dollars.

SAMUEL H. SCALES,
SOLOMON OLIVER.

COUNTY OF LA FAYETTE, *ss*:

On this 18th day of June, 1857, personally appeared before me Samuel H. Scales and Solomon Oliver, to me known to be the persons described in and who executed the foregoing undertaking, and acknowledged to me that they executed the same for the use and purposes therein specified.

M. HOLLISTER,
Justice of the Peace.

COUNTY OF LA FAYETTE, *ss*:

Samuel H. Scales and Solomon Oliver, being severally duly sworn on oath, each for himself deposes and says, that he is a resident of the State of Wisconsin, and is a freeholder and householder therein; and that he is worth more than five hundred dollars over and above all debts by him owing, and all responsibilities and liabilities by him incurred, and over and above all property exempt by law from execution or attachment.

SAMUEL H. SCALES.
SOLOMON OLIVER.

Subscribed and sworn before me this 18th day of June, 1857.
M. HOLLISTER,
Justice of the Peace.

288 Endorsed: Circuit Court. Henry Corwith *vs.* State Bank of Illinois. Notice of appeal from order setting aside sale to Cyrus Woodman and undertaking. Filed June 22, 1857, D. W. Kyle, clerk. Filed July 21, 1864, L. F. Kellogg, clerk, S. C.

289 STATE OF WISCONSIN, *La Fayette County, ss*:

L. P. Higbee, being duly sworn, says, that on the 22d day of June, 1857, he served the notice of which the within is a copy, and a copy of the within undertaking, on Samuel Crawford and Parley Eaton, attorneys for the within-named defendant, at Mineral Point, Iowa county, Wisconsin, by delivering to and leaving with each of them respectively copies thereof, and also on D. W. Kyle, esq., clerk of the Circuit Court for said La Fayette county, by delivering to and leaving with him copies thereof, at his office in Shullsburg, La Fayette county, Wisconsin. And further says not.

L. P. HIGBEE.

Subscribed and sworn to before me this 2d day of Sep., 1857.
D. W. KYLE, *Clerk.*

290 Endorsed: Filed Sept. 2, 1857, D. W. Kyle, clerk. Filed July 21, 1864, L. F. Kellogg, clerk, S. C.

291 Circuit Court La Fayette county, to April term, 1857.

Motion.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

STATE OF WISCONSIN, *County of La Fayette, ss:*

And now comes the defendant, The State Bank of Illinois, by Eaton and Crawford attorneys, and moves the court to set aside the sales of real estate made upon the writ of fieri facias or execution issued in this case to the sheriff of the county of La Fayette, in the State of Wisconsin, for the following reasons, to wit:

1st. Because the judgment in this case rendered in the Circuit Court of La Fayette county, and upon which the execution was issued, has been, by the Supreme Court of the State of Wisconsin, vacated, set aside, reversed, and wholly for nothing esteemed, and therefore, by virtue of the statute of Wisconsin, the purchasers of said real estate have no right to obtain a title to the same, and said purchasers have by said statute a right of recovery against said plaintiff for the amounts by them respectively paid upon said purchases, with interest.

2d. Because the sales aforesaid have not been made in accordance with the laws of Wisconsin concerning sales on execution, nor was there full and sufficient notices of said sales.

3d. Because no full and sufficient certificates of such sales, duly authenticated, have been made out and filed, as the law requires.

4th. Because the return upon said writ is insufficient and imperfect in many respects, and especially in that it does not show that there was not sufficient personal property of the defendant on which to levy, and from which to make the amount named in the writ.

5th. Because of divers other imperfections, illegalities, and omissions of duty in the levy, publication, and sales aforesaid, which are apparent on the record, writ, and return.

PARLEY EATON and
SAMUEL CRAWFORD,
Attorneys for Defendants.

292 Circuit Court La Fayette county, to April term, 1857.

Copy of notice.—Motion to set aside sales on execution.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

STATE OF WISCONSIN, *County of La Fayette, ss:*

To the above-named plaintiff, Henry Corwith, and his attorneys, and to Charles L. Stephenson, one of the purchasers at the sale made by the sheriff of La Fayette co., upon execution issued upon the judgment included in the above-entitled action:

You are hereby notified that a motion, with a copy of which, accompanying this notice, you are now served, will be brought up for

argument at the next term of the Circuit Court in and for the county of La Fayette, to be begun and held at the court-house at Shullsburg, in said county, on the third Monday of April next, to wit, the 20th day of April, A. D. 1857, the same being the first day of said term, or as soon thereafter as counsel can be heard; the object of which motion is to set aside, annul, and vacate the sales of real estate made upon and by virtue of the executions issued upon the judgment rendered in the above-entitled cause in the said Circuit Court. The said motion is based upon the records, writs, and returns thereto pertaining to the said cause in the Supreme Court of the State of Wisconsin, and in the said Circuit Court of La Fayette county.

Very respectfully,

EATON & CRAWFORD,
Atty's for Defendant.

Dated 28th March, 1857.

293 STATE OF WISCONSIN, *County of Iowa, ss*:

Thomas Scott Ansley, being duly sworn, deposes and says that he is a student in the office of Samuel Crawford, one of the attorneys of the defendant, in the cause mentioned and entitled in the within notice. and that on the 30th day of March, 1857, he made service of a copy of the within notice, and also of a copy of a motion referred to, by depositing the same in the post office at Mineral Point, duly prepaid, enveloped, and directed to Charles L. Stephenson, Galena, Ills., and further says not.

THOMAS SCOTT ANSLEY.

Subscribed and sworn to before me this 30th day of March, A. D. 1857.

SAMUEL THOMAS,
Justice of the Peace.

Endorsed: Filed in court April 21, 1857. D. W. Kyle, clerk. Filed July 21, 1865. L. F. Kellogg, clerk, S. C.

294 Circuit Court, La Fayette county, Wisconsin, of April term, 1857.

Motion to set aside sales on execution.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

The motion in this cause by the above-named defendant, by Samuel Crawford, attorney, to set aside the sale of real estate made upon the writ of fieri facias or execution, issued in this case to the sheriff of the county of La Fayette, which writ bore date the 23d day of April, 1855, and which sale was made to C. L. Stephenson, and notice of said motion having been duly served upon the said plaintiff, Henry

Corwith, and upon the said C. L. Stephenson, and the same having been argued by the attorneys of the parties respectively, and it appearing to the court, now here, that no seal was attached to the execution upon which such sale was made, it is now by the court ordered and adjudged that said motion be, and the same is hereby, sustained, granted, and allowed, and the sale aforesaid made to the said C. L. Stephenson hereby vacated, set aside, annulled, and declared to be of no effect. And it is further ordered that the said C. L. Stephenson pay the costs of said motion, to wit, the sum of ten dollars, costs and disbursements, amounting in the whole to the sum of seventeen 57-100 dollars. and that execution issue therefor.

Dated May 26th, 1856.

By the court:

M. M. COTHREN,
Circuit Judge.
SAMUEL CRAWFORD,
Defendant's Attorney.

295 Endorsed: State Bank of Illinois ads. Henry Corwith. Order setting aside sale to C. L. Stephenson, La Fayette county. Filed May 28th, 1857, at 6 o'clock a. m. D. W. Kyle, clerk. Filed July 21, 1864. L. T. Kellogg, clerk, S. C.

296 Circuit Court La Fayette county, Wisconsin.

HENRY CORWITH
versus
THE STATE BANK OF ILLINOIS.

To the above-named defendant, and its attorneys, and to David W Kyle, esq., clerk of the Circuit Court in and for the county of La Fayette:

Take notice that the above-named plaintiff, Henry Corwith and C. L. Stephenson, appeal to the Supreme Court from the order made in this cause on the 25th day of May, 1857, in favor of the said defendant, setting aside and vacating the sale of real estate made by the sheriff of the county of La Fayette to the said C. L. Stephenson, under and by virtue of the writ of fieri facias, or execution, issued in this cause, dated on the 23d day of April, 1855, and directed and delivered to the sheriff of the county of La Fayette. And you will further take notice that they appeal from the whole of said order, and from every part thereof.

Dated June 18th, 1857.

Yours, &c.,

JAMES H. KNOWTON and
CHARLES DUNN, *Pl'ff's Att'y.*
HENRY CORWITH, *Plaintiff.*
C. L. STEPHENSON, *Purchaser.*

Circuit Court La Fayette county.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

Whereas on the twenty-fifth day of May, 1857, an order was made in the above-entitled cause in favor of the above-named defendant, setting aside and vacating the sales of real estate mnde by the sheriff of the county of La Fayette to C. L. Stephenson, under and by virtue of the writ of fieri facias or execution issued in this cause, and directed and delivered to the said sheriff of the county of La Fayette aforesaid, and the said plaintiff and C. L. Stephenson, the purchaser, feeling themselves aggrieved by the said order, intend to appeal therefrom to the Supreme Court: Now, therefore, we, Samuel H. Scales, residing in White Oak Springs, and Solomon Oliver, residing in New Diggings, both in La Fayette county, Wisconsin, do hereby, pursuant to the statute in such case made and provided, undertake that said appellants will pay all costs and damages which may be awarded against them on said appeal, not exceeding two hundred and fifty dollars.

SAMUEL H. SCALES.
SOLOMON OLIVER.

COUNTY OF LA FAYETTE, *ss*:

On this 18th day of June, 1857, personally appeared before me Samuel H. Scales and Solomon Oliver, to me known to be the persons described in, and who executed the foregoing undertaking, and acknowledged to me that they executed the same for the uses and purposes therein specified.

COUNTY OF LA FAYETTE, *ss*:

Samuel H. Scales and Solomon Oliver, being duly sworn on oath, each for himself, deposes and says, that he is a resident of the State of Wisconsin, and is a freeholder and householder therein; and that he is worth more than five hundred dollars over and above all debts by him owing, and all responsibilities and liabilities by him incurred, and over and above all property exempt by law from execution or attachment.

SAMUEL H. SCALES.
SOLOMON OLIVER.

Subscribed and sworn before me this 18th day of June, 1857.
M. HOLLISTER.
Justice of the Peace.

297 Endorsed: Circuit Court. Henry Corwith *vs.* State Bank of Illinois. Notice of appeal from order setting aside sale to C. L. Stephenson, and undertaking. Filed June 22, 1857. D. W. Kyle, clerk. Filed July 21, 1864. L. F. Kellogg, S. C.

298 STATE OF WISCONSIN, *La Fayette County, ss*:

L. P. Higbee, being duly sworn, says that on the 22d day of June, 1857, he served the notice of which the within is a copy, and a copy of the within undertaking, on Samuel Crawford and Parley Eaton, attorneys for the within-named defendant, at Mineral Point, Iowa county, Wisconsin, by delivering to and leaving with each of them respectively copies thereof, and also on D. W. Kyle, esq., clerk of the Circuit Court for said La Fayette county, by delivering to and leaving with him copies thereof, at his office in Shullsburg, La Fayette county, Wisconsin. And further says not.

L. P. HIGBEE.

Subscribed and sworn to before me this 2d day of Sept., 1857.

D. W. KYLE, *Clerk.*

299 Endorsed: Filed 2d Sept., 1857. D. W. Kyle, clerk. Filed July 21, 1864. L. F. Kellogg, clerk, S. C.

300 Circuit Court La Fayette county, to April term, 1857.

Motion.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

STATE OF WISCONSIN, *County of La Fayette, ss*:

And now comes the said defendant, the State Bank of Illinois, by Eaton and Crawford, attorneys, and moves the court to set aside the sales of real estate made upon the writ of fieri facias or execution issued in this case to the sheriff of the county of La Fayette, in the State of Wisconsin, for the following reasons, to wit:

1st. Because the judgment in this case rendered in the Circuit Court of La Fayette county, and upon which the said execution was issued, has been by the Supreme Court of the State of Wisconsin vacated, set aside, reversed, and wholly for nothing esteemed; and therefore, by virtue of the statute of Wisconsin, the purchasers of said real estate have no right to obtain a title to the same, and said purchasers have by said statute a right of recovery against said plaintiff for the amounts by them respectively paid upon said purchases, with interest.

2d. Because the sales aforesaid have not been made in accordance with the laws of Wisconsin concerning sales on execution, nor was there full and sufficient notices of said sales.

3d. Because no full and sufficient certificates of such sales, duly authenticated, have been made out and filed as the law requires.

4th. Because the return upon said writ is insufficient and imperfect in many respects, and especially in that it does not show that there was not sufficient personal property of the defendant on which to levy and from which to make the amount named in the writ.

5th. Because of divers other imperfections, illegalities and omissions of duty in the levy, publication, and sales aforesaid, which are apparent on the record, writ, and return.

PARLEY EATON and
SAMUEL CRAWFORD,
Attorneys for Defendant.

301 Circuit Court La Fayette county, to April term, 1857.

Copy of notice.—Motion to set aside sales on execution.

THE STATE BANK OF ILLINOIS *ads.* HENRY CORWITH.

STATE OF WISCONSIN, *County of La Fayette, ss:*

To the above-named plaintiff, Henry Corwith, and his attorneys, and to J. S. Kelso:

You are hereby notified that a motion, with a copy of which, accompanying this notice, you are now served, will be brought up for argument at the next term of the Circuit Court in and for the county of La Fayette, to be begun and held at the court-house in Shullsburg, in said county, on the third Monday of April next, to wit, the 20th day of April, A. D. 1857, the same being the first day of said term, or as soon thereafter as counsel can be heard, the object of which motion is to set aside, annul and vacate the sales of real estate made upon and by virtue of the executions issued upon the judgment rendered in the above-entitled cause in the said Circuit Court. The said motion is based upon the records, writs, and returns thereto pertaining to the said cause in the Supreme Court of the State of Wisconsin, and in the said Circuit Court of La Fayette county.

Yours, respectfully,

EATON & CRAWFORD,
Att'ys for Defendant.

Dated March 31st, 1857.

STATE OF WISCONSIN, *County of Iowa, ss:*

Samuel Crawford, being duly sworn, deposes and says, that he is one of the attorneys of the defendant, in the cause mentioned and entitled in the within notice, and that on the 31st day of March, 1857, he made service of a copy of the within notice and also of a copy of the motion therein referred to, by depositing the same in the post office in Mineral Point, duly enveloped and prepaid, and directed to J. S. Kelso, esq., White Oak Springs, La Fayette, Wis.; and further says not.

SAM. CRAWFORD.

Subscribed and sworn to before me this 31st day of March, A. D. 1857.

RICHARD L. READ,
Justice of the Peace, Iowa Co., Wis.

Endorsed: Filed in open court April 21, 1857. D. W. Kyle, clerk. Filed July 21, 1864. L. F. Kellogg, clerk S. C.

303 Circuit Court La Fayette county, Wisconsin, of April term, 1857.

Motion to set aside sales on execution.

THE STATE BANK OF ILLINOIS *ads.* HENRY CORWITH.

The motion made in this cause by the above-named defendant, by Samuel Crawford, attorney, to set aside the sale of real estate made upon the writ of fieri facias or execution, issued in this case to the sheriff of the county of La Fayette, which writ bore date the 23d day of April, 1855, and which sale was made to J. S. Kelso, and notice of said motion having been duly served upon the said plaintiff, Henry Corwith, and upon the said J. S. Kelso, and the same having been argued by the attorneys of the parties respectively, and it appearing to the court, now here, that no seal was attached to the execution upon which such sale was made, it is now by the court ordered and adjudged that said motion be and the same is hereby sustained, granted and allowed, and the sale aforesaid made to the said J. S. Kelso hereby vacated, set aside, annulled, and declared to be of no effect. And it is further ordered that the said J. S. Kelso pay the costs of said motion, to wit, the sum of ten dollars, costs and disbursements, amounting in the whole to the sum of seventeen $\frac{57}{100}$ dollars, and that execution issue therefor.

Dated May 25th, A. D. 1857.

By the court:

M. M. COTHREN,
Circuit Judge.
SAMUEL CRAWFORD,
Defendant's Attorney.

304 Endorsed: State Bank of Illinois *ads.* Henry Corwith. Order setting aside sale to J. S. Kelso, La Fayette co. Filed May 28th, 1857, at 6 o'clock a. m., D. W. Kyle, clerk. Filed July 21, 1864, L. F. Kellogg, clerk S. C.

305 Circuit Court La Fayette county, Wisconsin.

HENRY CORWITH
versus
THE STATE BANK OF ILLINOIS.

To the above-named defendant and its attorneys, and to David W. Kyle, esq., clerk of the Circuit Court in and for the county of La Fayette:

Take notice that the above-named plaintiff, Henry Corwith, and J. S. Kelso, appeal to the Supreme Court from the order made in this cause on the 25th day of May, 1857, in favor of the said defendant, setting aside and vacating the sale of real estate made by the sheriff of the county of La Fayette to the said J. S. Kelso, under and by virtue of the writ of fieri facias, or execution issued in this cause dated on the 23rd day of April, 1855, and directed and delivered to the sheriff of the county of La Fayette. And you will further take notice that they appeal from the whole of said order and from every part thereof.

Dated June 18th, 1857.

Yours, &c.,

JAMES H. KNOWTON, and
CHARLES DUNN, *Pl'ff's Att'y.*
HENRY CORWITH, *Plaintiff.*
J. S. KELSO, *Purchaser.*

Circuit Court La Fayette county.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

Whereas on the 25th day of May, 1857, an order was made in the above-entitled cause, in favor of the above-named defendant, setting aside and vacating the sales of real estate made by the sheriff of the county of La Fayette to J. S. Kelso, under and by virtue of the writ of fieri facias or execution issued in this cause, and directed and delivered to the said sheriff of the county of La Fayette aforesaid, and the said plaintiff and J. S. Kelso, the said purchaser, feeling themselves aggrieved by the said order, intend to appeal therefrom to the Supreme Court: Now therefore, we, Samuel H. Scales, residing in White Oak Springs, and Solomon Oliver, residing in New Diggings, both of La Fayette county, Wisconsin, do hereby, pursuant to the statute in such case made and provided, undertake that said appellants will pay all costs and damages which may be awarded against them on said appeal, not exceeding two hundred and fifty dollars.

SAMUEL H. SCALES.
SOLOMON OLIVER.

COUNTY OF LA FAYETTE, *ss:*

On this 18th day of June, 1857, personally appeared before me Samuel H. Scales and Solomon Oliver, to me known to be the persons described in and who executed the foregoing undertaking, and acknowledged to me that they executed the same for the uses and purposes therein specified.

COUNTY OF LA FAYETTE, *ss:*

Samuel H. Scales and Solomon Oliver, being severally duly sworn on oath, each for himself deposes and says, that he is a resident of the State of Wisconsin, and is a freeholder and householder therein; and that he is worth more than five hundred dollars over and above all debts by him owing, and all responsibilities and liabilities by him incurred, and over and above all property exempt by law from execution or attachment.

SAMUEL H. SCALES.
SOLOMON OLIVER.

Subscribed and sworn before me this 18th day of June, 1857.
M. HOLLISTER,
Justice of the Peace.

306 Endorsed: Circuit Court. Henry Corwith *vs.* The State Bank of Illinois. Notice of appeal from order setting aside sale to J. S. Kelso, and undertaking. Filed June 22, 1857, D. W. Kyle, clerk. Filed July 21st, 1864, L. F. Kellogg, clerk S. C.

307 STATE OF WISCONSIN, *La Fayette County, ss:*

L. H. Higbee, being duly sworn, says that on the 22d day of June, 1857, he served the notice of which the within is a copy, and a copy of the within undertaking, on Samuel Crawford and Parley Eaton, attorneys for the within-named defendant, at Mineral Point, Iowa county, Wisconsin, by delivering to and leaving with each of them respectively copies thereof, and also on D. W. Kyle, esq., clerk of the Circuit Court for said La Fayette county, by delivering to and leaving with him copies thereof, at his office in Shullsburg, La Fayette county, Wisconsin. And further says not.

L. P. HIGBEE.

Subscribed and sworn to before me, this 2d day of Sept., 1857.
D. W. KYLE, *Clerk.*

308 Endorsed: Filed Sept. 2nd, 1857, D. W. Kyle, clerk. Filed July 21, 1864, L. F. Kellogg, clerk S. C.

309 Circuit Court La Fayette county, to April term, 1857.

Motion.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

STATE OF WISCONSIN, *County of La Fayette, ss:*

And now comes the said defendant, The State Bank of Illinois, by Eaton and Crawford, attorneys, and moves the court to set aside the sales of real estate made upon the writ of fieri facias or execution issued in this case to the sheriff of the county of La Fayette, in the State of Wisconsin, for the following reasons, to wit:

1st. Because the judgment in this case rendered in the Circuit Court of La Fayette county, and upon which the said execution was issued, has been by the Supreme Court of the State of Wisconsin vacated, set aside, reversed, and wholly for nothing esteemed, and therefore, by virtue of the statute of Wisconsin, the purchasers of said real estate have no right to obtain a title to the same, and said purchasers have by said statute a right of recovery against said plaintiff for the amounts by them respectively paid upon said purchases, with interest.

2d. Because the sales aforesaid have not been made in accordance with the laws of Wisconsin, concerning sales on execution, nor was there full and sufficient notices of said sales.

3d. Because no full and sufficient certificates of such sales, duly authenticated, have been made out and filed, as the law requires.

4th. Because the return upon said writ is insufficient and imperfect in many respects, and especially in that it does not show that there was not sufficient personal property of the defendant on which to levy and from which to make the amount named in the writ.

5th. Because of divers other imperfections, illegalities, and omissions of duty in the levy, publication, and sales aforesaid, which are apparent on the record, writ, and return.

PARLEY EATON and
SAMUEL CRAWFORD,
Attorneys for Defendant.

310 Circuit Court La Fayette county, to April term, 1857.

Copy of notice.—Motion to set aside sales on execution.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

STATE OF WISCONSIN, *County of La Fayette, ss:*

To the above-named plaintiff, Henry Corwith, and his attorneys, and to Solomon Oliver:

You are hereby notified that a motion, with a copy of which, accompanying this notice, you are now served, will be brought up for

argument at the next term of the Circuit Court in and for the county of La Fayette, to be begun and held at the court-house in Shullsburg, in said county, on the third Monday of April next, to wit, the 20th day of April, A. D. 1857, the same being the first day of said term, or as soon thereafter as counsel can be heard—the object of which motion is to set aside, annul, and vacate the sales of real estate made upon and by virtue of the executions issued upon judgment rendered in the above-entitled cause in the said Circuit Court. The said motion is based upon the records, writs, and returns thereto pertaining to the said cause in the Supreme Court of the State of Wisconsin and in the said Circuit Court of La Fayette county.

Yours, respectfully,

EATON & CRAWFORD,
Att'ys for Defendant.

Dated April 1, 1857.

311 STATE OF WISCONSIN, *County of Iowa, ss* :

Thomas Scott Ansley, being duly sworn, deposes and says that he is a student in the office of Samuel Crawford, one of the attorneys for the defendant in the cause mentioned and entitled in the within notice, and that on the 1st day of April, 1857, he made service of a copy of the within notice, and also a copy of the notice therein referred to, by depositing the same in the post office in Mineral Point, duly prepaid, enveloped, and directed to Solomon Oliver, New Diggings, Wis.

THOMAS SCOTT ANSLEY.

Subscribed and sworn to before me, this 1st day of April, A. D. 1857.

RICHARD L. READ,
Justice of the Peace, Iowa County, Wis.

Endorsed : Filed in open court April 21, 1857, D. W. Kyle, clerk. Filed July 21, 1864, L. F. Kellogg, clerk S. C.

312 Circuit Court La Fayette county, Wisconsin, of April term 1857.

Motion to set aside sales on execution.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

The motion made in this cause by the above-named defendant, by Samuel Crawford, attorney, to set aside the sale of real estate made upon the writ of fieri facias or execution issued in this case to the sheriff of the county of La Fayette, which writ bore date the 23rd day of April, 1855, and which sale was made to Soloman Oliver, and notice of said motion having been duly served upon the said plaintiff, Henry Corwith, and also upon said Solomon Oliver, and the same having been argued by the attorneys of the parties respectively, and

it appearing to the court, now here, that no seal was attached to the execution upon which such sale was made, it is now by the court ordered and adjudged that said motion be and the same is hereby sustained, granted, and allowed, and the sale aforesaid made to the said Solomon Oliver hereby vacated, set aside, annulled, and declared to be of no effect. And it is further ordered that the said Solomon Oliver pay the costs of said motion, to wit, the sum of ten dollars, costs and disbursements, amounting in the whole to the sum of seventeen 57-100 dollars, and that execution issue therefor.

Dated May 25th, A. D. 1857.

By the court.

M. M. COTHREN,
Circuit Judge.

SAMUEL CRAWFORD,
Defendant's Attorney.

313 Endorsed: State Bank of Illinois *ads.* Henry Corwith. Order setting aside sale to Solomon Oliver, La Fayette co. Filed May 28th, 1857, at 6 o'clock a. m., D. W. Kyle, clerk. Filed July 21, 1864, L. F. Kellogg, clerk S. C.

314 Circuit Court La Fayette county, Wisconsin.

HENRY CORWITH
versus
THE STATE BANK OF ILLINOIS.

To the above-named defendant, and its attorneys, and to David W. Kyle, esq., clerk of the Circuit Court in and for the county of La Fayette.

Take notice that the above-named plaintiff, Henry Corwith and Solomon Oliver, appeal to the Supreme Court from the order made in this cause on the 25th day of May, 1857, in favor of the said defendant, setting aside and vacating the sale of real estate made by the sheriff of the county of La Fayette to the said Solomon Oliver, under and by virtue of the writ of fieri facias or execution issued in this cause dated on the 23d day of April, 1855, and directed and delivered to the sheriff of the county of La Fayette. And you will further take notice that they appeal from the whole of said order and from every part thereof.

Dated June 18th, 1857.

Yours, &c.,
JAMES H. KNOWTON and
CHARLES DUNN, *Pl'tff's Att'y.*
HENRY CORWITH, *Plaintiff.*
SOLOMON OLIVER, *Purchaser.*

Circuit Court La Fayette county.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

Whereas on the 25th day of May, 1857, an order was made in the above-entitled cause, in favor of the above-named defendant, setting

aside and vacating the sales of real estate made by the sheriff of the county of La Fayette to Solomon Oliver, under and by virtue of the writ of fieri facias or execution issued in this cause, and directed and delivered to the said sheriff of the county of La Fayette aforesaid, and the said plaintiff and Solomon Oliver, the said purchaser, feeling themselves aggrieved by the said order, intend to appeal therefrom to the Supreme Court :

Now, therefore, we, Samuel H. Scales, residing in White Oak Springs, and Edward Meloy, residing in Shullsburg, both in La Fayette county, Wisconsin, do hereby, pursuant to the statute in such case made and provided, undertake, that said appellants will pay all costs and damages which may be awarded against them on said appeal not exceeding two hundred and fifty dollars.

SAMUEL H. SCALES.
EDWARD MELOY.

COUNTY OF LA FAYETTE, *ss :*

On this 18th day of June, 1857, personally appeared before me Samuel H. Scales and Edward Meloy, to me known to be the persons described in and who executed the foregoing undertaking, and acknowledged to me that they executed the same for the uses and purposes therein specified.

M. HOLLISTER,
Justice of the Peace.

COUNTY OF LA FAYETTE, *ss* :

Samuel H. Scales and Edward Meloy, being severally duly sworn on oath, each for himself deposes and says, that he is a resident of the State of Wisconsin, and is a freeholder and householder therein; and that he is worth more than five hundred dollars over and above all debts by him owing, and all responsibilities and liabilities by him incurred, and over and above all property exempt by law from execution or attachment.

SAMUEL H. SCALES.
EDWARD MELOY.

Subscribed and sworn before me, this 18th day of June, 1857.

M. HOLLISTER,
Justice of the Peace.

315 Endorsed: Circuit Court. Henry Corwith *ads.* State Bank of Illinois. Notice of appeal from order setting aside sale to Solomon Oliver, and undertaking. Filed June 22, 1857, D. W. Kyle, clerk. Filed July 21, 1864, L. F. Kellogg, clerk S. C.

316 STATE OF WISCONSIN, *La Fayette County, ss*:

L. P. Higbee, being duly sworn, says, that on the 22d day of June, 1857, he served the notice of which the within is a copy, and a copy of the within undertaking on Samuel Crawford and Parley Eaton, attorneys for the within named defendant, at Mineral Point, Iowa

county. Wisconsin, by delivering to and leaving with each of them respectively copies thereof, and also on D. W. Kyle, esq., clerk of the Circuit Court for said La Fayette county, by delivering to and leaving with him copies thereof, at his office in Shullsburg, La Fayette county, Wisconsin. And further says not.

L. P. HIGBEE.

Subscribed and sworn to before me this 2d day of Sept., 1857.
D. W. KYLE, *Clerk.*

317 Endorsed: Filed Sept. 2, 1857. D. W. Kyle, clerk. Filed July 21, 1864. L. F. Kellogg, clerk S. C.

318 Circuit Court La Fayette county, to April term, 1857.

Motion.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

STATE OF WISCONSIN, *County of La Fayette, ss:*

And now comes the said defendant, The State Bank of Illinois, by Eaton and Crawford, attorneys, and moves the court to set aside the sales of real estate made upon the writ of fieri facias or execution issued in this case to the sheriff of the county of La Fayette, in the State of Wisconsin, for the following reasons, to wit:

1st. Because the judgment in this case rendered in the Circuit Court of La Fayette county, and upon which the said execution was issued, has been, by the Supreme Court of the State of Wisconsin, vacated, set aside, reversed and wholly for nothing esteemed, and therefore, by virtue of the statute of Wisconsin, the purchasers of said real estate have no right to obtain a title to the same, and said purchasers have by said statute a right of recovery against said plaintiff for the amounts by them respectively paid upon said purchases, with interest.

2d. Because the sales aforesaid have not been made in accordance with the laws of Wisconsin concerning sales on execution, nor was there full and sufficient notices of said sales.

3d. Because no full and sufficient certificates of such sales, duly authenticated, have been made out and filed, as the law requires.

4th. Because the return upon said writ is insufficient and imperfect in many respects, and especially in that it does not show that there was not sufficient personal property of the defendant, on which to levy and from which to make the amount named in the writ.

5th. Because of divers other imperfections, illegalities and omissions of duty in the levy, publication, and sales aforesaid, which are apparent on the record, writ and return.

PARLEY EATON & SAMUEL CRAWFORD,
Attorneys for Defendant.

319 Circuit Court La Fayette county, to April term, 1857.

Copy of notice.—Motion to set aside sales on execution.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

STATE OF WISCONSIN, *County of La Fayette, ss:*

To the above-named plaintiff, Henry Corwith, and his attorneys, and to Samuel Scales:

You are hereby notified that a motion, with a copy of which, accompanying this notice, you are now served, will be brought up for argument at the next term of the Circuit Court in and for the county of La Fayette, to be begun and held at the court-house in Shullsburg, in said county, on the third Monday of April next, to wit, the 20th day of April, A. D. 1857, the same being the first day of said term, or as soon thereafter as counsel can be heard—the object of which motion is to set aside, annul and vacate the sales of real estate made upon and by virtue of the executions issued upon the judgment rendered in the above-entitled cause in the said Circuit Court. The said motion is based upon the records, writs and returns thereto, pertaining to the said cause in the Supreme Court of the State of Wisconsin and in the said Circuit Court of La Fayette county.

Yours, respectfully,

EATON & CRAWFORD,
Att'ys for Defendant.

Dated March 31st, 1857.

320 STATE OF WISCONSIN, *County of Iowa, ss:*

Samuel Crawford, being duly sworn, deposes and says that he is one of the attorneys for the defendant in the cause mentioned and entitled in the within notice, and that on the 31st day of March, 1857, he made service of a copy of the within notice, and also a copy of the motion therein referred to, by depositing the same in the post office in Mineral Point, duly enveloped, prepaid and directed to Samuel Scales, esq., New Diggings, Wis. And further says not.

SAM. CRAWFORD.

Subscribed and sworn to before me this 31st day of March, A. D. 1857.

RICHARD L. READ,
Justice of the Peace, Iowa Co., Wis.

321 Circuit Court La Fayette county, Wisconsin, of April term, 1857.

Motion to set aside sales on execution.

THE STATE BANK OF ILLINOIS
ads.
HENRY CORWITH.

The motion made in this cause by the above-named defendant, by Samuel Crawford, attorney, to set aside the sale of real estate made upon the writ of fieri facias or execution issued in this case to the sheriff of the county of La Fayette, which writ bore date the 23rd day of April, 1855, and which sale was made to Samuel Scales, and notice of said motion having been duly served upon the said plaintiff, Henry Corwith, and upon the said Samuel Scales, and the same having been argued by the attorneys of the parties respectively, and it appearing to the court, now here, that no seal was attached to the execution upon which such sale was made, it is now by the court ordered and adjudged that said motion be and the same is hereby sustained, granted and allowed, and the sale aforesaid made to the said Samuel Scales, hereby vacated, set aside, annulled, and declared to be of no effect. And it is further ordered that the said Samuel Scales pay the costs of said motion, to wit: the sum of ten dollars, costs and disbursements, amounting, in the whole, to the sum of seventeen and 51-100 dollars, and that execution issue therefor.

Dated May 25th, A. D. 1857.

By the court:

M. M. COTHREN,
Circuit Judge.
SAMUEL CRAWFORD,
Defendant's Attorney.

322 Endorsed: State Bank of Illinois *ads.* Henry Corwith. Order setting aside sale to Sam'l Scales, La Fayette co. Filed May 28th, 1857, at 6 o'clock a. m. D. W. Kyle, clerk. Filed Jan. 21st, 1864. L. F. Kellogg, clerk S. C.

323 Circuit Court La Fayette county, Wisconsin.

HENRY CORWITH
versus
THE STATE BANK OF ILLINOIS.

To the above-named defendant and its attorneys, and to David W. Kyle, esq., clerk of the Circuit Court in and for the county of La Fayette:

Take notice that the above-named plaintiff, Henry Corwith and Samuel H. Scales, appeal to the Supreme Court from the order made in this cause on the 25th day of May, 1857, in favor of the said defendant, setting aside and vacating the sale of real estate made by

the sheriff of the county of La Fayette to the said Samuel H. Scales under and virtue of the writ of fieri facias, or execution, issued in this cause, dated on the 23rd day of April, 1855, and directed and delivered to the sheriff of the county of La Fayette. And you will further take notice that they appeal from the whole of said order and from every part thereof.

Dated June 18th, 1857.

Yours, &c.,

JAMES H. KNOWTON and
CHARLES DUNN, *Pl'ff's Att'y.*
HENRY CORWITH. *Plaintiff.*
SAMUEL H. SCALES, *Purchaser.*

Circuit Court La Fayette county.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

Whereas on the 25th day of May, 1857, an order was made in the above-entitled cause, in favor of the above-named defendant, setting aside and vacating the sales of real estate made by the sheriff of the county of La Fayette to Samuel H. Scales, under and by virtue of the writ of fieri facias or execution issued in this cause, and directed and delivered to the said sheriff of the county of La Fayette aforesaid, and the said plaintiff and Samuel H. Scales, the said purchaser, feeling themselves aggrieved by the said order, intend to appeal therefrom to the Supreme Court: Now therefore, we, Solomon Oliver, residing in New Diggings, and Edward Meloy, residing in Shullsburg, both in La Fayette county, Wisconsin, do hereby, pursuant to the statute in such case made and provided, undertake that said appellants will pay all costs and damages which may be awarded against them on said appeal, not exceeding two hundred and fifty dollars.

SOLOMON OLIVER.
EDWARD MELOY.

COUNTY OF LA FAYETTE, *ss:*

On this 18th day of June, 1857, personally appeared before me Solomon Oliver and Edward Meloy, to me known to be the persons described in and who executed the foregoing undertaking, and acknowledged to me that they executed the same for the uses and purposes therein specified.

M. HOLLISTER.
Justice of the Peace.

COUNTY OF LA FAYETTE, *ss:*

Solomon Oliver and Edward Meloy, being severally duly sworn on oath, each for himself deposes and says, that he is a resident of the State of Wisconsin, and is a freeholder and householder therein; and that he is worth more than five hundred dollars over and above all

debts by him owing, and all responsibilities and liabilities by him incurred, and over and above all property exempt by law from execution or attachment.

SOLOMON OLIVER.
EDWARD MELOY.

Subscribed and sworn before me this 18th day of June, 1857.
M. HOLLISTER,
Justice of the Peace.

324 Endorsed: Circuit Court. Henry Corwith *vs.* The State Bank of Illinois. Notice of appeal from order setting aside sale to Samuel H. Scales, and undertaking. Filed June 22nd, 1857. D. W. Kyle, clerk. Filed July 21, 1864, L. F. Kellogg, clerk S. C.

325 STATE OF WISCONSIN, *La Fayette County, ss*:

L. P. Higbee, being duly sworn, says that on the 22d day of June, 1857, he served the notice, of which the within is a copy, and a copy of the within undertaking on Samuel Crawford and Parley Eaton, attorneys for the within-named defendant, at Mineral Point, Iowa county, Wisconsin, by delivering to and leaving with each of them, respectively, copies thereof, and also on D. W. Kyle, esq., clerk of the Circuit Court for said La Fayette county, by delivering to and leaving with him copies thereof, at his office in Shullsburg, La Fayette county, Wisconsin. And further says not.

L. P. HIGBEE.

Subscribed and sworn to before me, this 2d day of Sept., 1857.
D. W. KYLE, *Clerk.*

326 Endorsed: Filed Sept. 2nd, 1857. D. W. Kyle, clerk. Filed July 21, 1864. L. F. Kellogg, clerk S. C.

327 Be it remembered that at a term of the Supreme Court begun and held at the capitol, in Madison, the seat of government of said State, on the 3rd Tuesday, to wit, on the 15th day of June, A. D. 1858, on the 47th day of the term, to wit, on the 11th day of August, A. D. 1858, present, The Hon Edward V. Whiton, Chief Justice, and the Hon, Abram D. Smith, and the Hon. Orsamus Cole, associate justices of said court, the following proceedings were had, inter alia, to wit:

Appeal from Circuit Court La Fayette county, Wisconsin.

HENRY CORWITH AND JAMES H. ERNEST, appellants,
vs.
THE STATE BANK OF ILLINOIS, respondent.

This cause came on to be heard on appeal from the order of the Circuit Court of La Fayette county, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by

the court that the order of the Circuit Court of La Fayette county, made on the 25th day of May, A. D. 1857, be and the same is hereby reversed, with costs, to be taxed against said respondent.

STATE OF WISCONSIN, *Supreme Court, ss*:

I, La Fayette Kellogg, clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true copy of the order and judgment of the court in the above-entitled cause, as appears of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, this 12th day of August, A. D. 1858.

[SEAL.] LA FAYETTE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

Filed Dec. 9th, A. D. 1867.

D. W. KYLE, *Clerk.*

328 Endorsed: Supreme Court. Henry Corwith and James H. Ernest, appellants, *vs.* The State Bank of Illinois, respondents. Remittitur. Filed December 9th, 1867. D. W. Kyle, clerk. Copy.

Be it remembered that at a term of the Supreme Court begun and held at the capitol, in Madison, the seat of government of said State, on the 3rd Tuesday, to wit, on the 15th day of June, A. D. 1858, on the 47th day of the term, to wit, on the 11th day of August, A. D. 1858, present, The Hon. Edward V. Whiton, chief justice, and the Hon. Abram D. Smith, and the Hon. Orsamus Cole, associate justices of said court, the following proceedings were had, inter alia, to wit:

Appeal from Circuit Court La Fayette county, Wisconsin.

HENRY CORWITH & CYRUS WOODMAN, appellants,
vs.
THE STATE BANK OF ILLINOIS, respondent.

This cause came on to be heard on the appeal from the order of the Circuit Court of La Fayette county, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court, that the order of the Circuit Court of La Fayette county, made on the 25th day of May, A. D. 1857, be, and the same is hereby, reversed, with costs, to be taxed against the said respondent.

STATE OF WISCONSIN, *Supreme Court, ss*:

I, La Fayette Kellogg, clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true copy of the order and judgment of the court in the above en-
329 titled cause, as appears of record.

In testimony whereof I have hereunto set my hand and affixed

the seal of said court, at Madison, this 12th day of August, A. D. 1858.

Copy.

[SEAL.] LA FAYETTE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

Endorsed: Copy. Supreme Court. Henry Corwith & Cyrus Woodman, appellants, *vs.* The State Bank of Illinois. Remittitur. Filed Dec'r 9th, 1867. D. W. Kyle, clerk.

Be it remembered, that at a term of the Supreme Court begun and held at the capitol, in Madison, the seat of government of said State, on the 3rd Tuesday, to wit, on the 15th day of June, A. D. 1858, on the 47th day of the term, to wit, on the 11th day of August, A. D. 1858, present, The Hon. Edward V. Whiton, chief justice, and the Hon. Abram D. Smith, and the Hon. Orsamus Cole, associate justices of said court, the following proceedings were had, inter alia, to wit:

Appeal from Circuit Court La Fayette county, State of Wisconsin.

HENRY CORWITH AND C. L. STEPHENSON, appellants,
vs.
THE STATE BANK OF ILLINOIS, respondent.

This cause came on to be heard on appeal from the order of the Circuit Court of La Fayette county, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court, that the order of the Circuit Court of La Fayette county, made on the 25th day of May, A. D. 1857, be, and the same is hereby, reversed, with costs, to be taxed against the said respondent.

330 STATE OF WISCONSIN, *Supreme Court, ss:*

I, La Fayette Kellogg, clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true copy of the order and judgment of the court in the above-entitled cause, as appears of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, this 12th day of August, A. D. 1858.

Copy.

[SEAL.] LA FAYETTE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

Endorsed: Copy. Henry Corwith and C. L. Stephenson, appellants, *vs.* The State Bank of Illinois. Remittitur. Filed Dec. 9th, 1867. D. W. Kyle, clerk.

Be it remembered, that at a term of the Supreme Court, begun and held at the capitol, in Madison, the seat of government of said State on the 3rd Tuesday, to wit, on the 15th day of June, A. D. 1858, on the 47th day of the term, to wit, on the 11th day of August, A. D. 1858, present, the Hon. Edward V. Whiton, chief justice, and the Hon. Abram D. Smith, and the Hon. Orsamus Cole, associate justice of said court, the following proceedings were had, inter alia, to wit:

Appeal from Circuit Court La Fayette county, State of Wisconsin.

HENRY CORWITH AND J. S. KELSO, appellants,
vs.
THE STATE BANK OF ILLINOIS, respondent.

331 This cause came on to be heard on appeal from the order of the Circuit Court of La Fayette county, and was argued by counsel.

On consideration whereof it is by this court ordered and adjudged that the order of the Circuit Court of La Fayette county, made on the 25th day of May, A. D. 1857, be and the same is hereby reversed with costs to be taxed against the said respondent.

STATE OF WISCONSIN, *Supreme Court, ss*:

I, La Fayette Kellogg, clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true copy of the order and judgment of the court in the above entitled cause, as appears of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Madison, this 12th day of August, A. D. 1858.

Copy.

[SEAL.] LA FAYETTE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

Endorsed: Supreme Court. Henry Corwith and J. S. Kelso, appellants, *vs.* the State Bank of Illinois. Remittitur. Filed Dec. 9th, 1867. D. W. Kyle, clerk. Copy.

Be it remembered that at a term of the Supreme Court begun and held at the capitol in Madison, the seat of government of said State, on the 3d Tuesday, to wit, on the 15th day of June, A. D., 1858, on the 47th day of the term, to wit, on the 11th day of August, A. D. 1858, present, the Hon. Edward V. Whiton, chief justice, and the Hon. Abram D. Smith and the Hon. Orsamus Cole, associate justices of said court, the following proceedings were had inter alia, to wit:

332 *Appeal from Circuit Court La Fayette county, Wisconsin.*

HENRY CORWITH and SOLOMON OLIVER, appellants,
vs.
THE STATE BANK OF ILLINOIS, respondent.

This cause came on to be heard on appeal from the order of the Circuit Court of La Fayette county, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the order of the Circuit Court of La Fayette county, made on the 25th day of May, A. D. 1857, be and the same is hereby reversed, with costs to be taxed against the said respondent.

STATE OF WISCONSIN, *Supreme Court, ss*:

I, La Fayette Kellogg, clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true copy of the order and judgment of the court in the above-entitled cause as appears of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Madison this 15th day of August, A. D. 1858.

Copy.

[SEAL.] LA FAYETTE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

Endorsed: Supreme Court. Henry Corwith and Solomon Oliver, appellants, *vs.* The State Bank of Illinois. Remittitur. Filed Dec. 9th, 1867. D. W. Kyle, clerk. Copy.

Be it remembered that at a term of Supreme Court begun and held at the capitol in Madison, the seat of government of said State, on the 3rd Tuesday, to wit, on the 15th day of June, A. D. 1858, on the 47th day of the term, to wit, on the 11th day of August,
333 A. D. 1858, present the Hon. Edward V. Whiton, chief justice, and the Hon. Abram D. Smith and the Hon. Orsamus Cole, associate justices of said court, the following proceedings were had inter alia, to wit:

Appeal from Circuit Court La Fayette county, State of Wisconsin.

HENRY CORWITH and SAMUEL H. SCALES, appellants,
vs.
THE STATE BANK OF ILLINOIS, respondents.

This cause came on to be heard on appeal from the order of the Circuit Court of La Fayette county, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged that the order of the Circuit Court of La Fayette county, made on the 25th day of May, A. D. 1857, be and the same is hereby reversed, with costs to be taxed against the said respondent.

STATE OF WISCONSIN, *Supreme Court, ss*:

I, La Fayette Kellogg, clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true copy of the order and judgment of the court in the above-entitled cause, as appears of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 12th day of August, A. D. 1858.

Copy.

[SEAL.] LA FAYETTE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

Endorsed: Supreme Court. Henry Corwith and Samuel H. Scales, appellants, *vs.* The State Bank of Illinois, respondent. Remittitur. Filed Dec. 9th, 1867. D. W. Kyle, clerk. Copy.

334 STATE OF WISCONSIN, *La Fayette County, Wisconsin, ss*:

CIRCUIT COURT, *Clerk's Office.*

I, D. W. Kyle, clerk of the Circuit Court of La Fayette county aforesaid, do hereby certify that I have carefully compared the annexed and foregoing copies of the record, files and papers in the foregoing entitled action with the original record papers and files in my said office, and that the same is a true transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and seal of said court at Darlington, in said county, this 12th day of December, A. D. 1867.

[L. S.] Attest.

D. W. KYLE, *Clerk.*

[U. S. rev. stamp, cancelled.]

But to the reading of the same in evidence, or any part thereof, said plaintiffs' counsel did then and there object for the reasons following as grounds of said objection:

1. The court had no jurisdiction of the defendant in said attachment suit of Corwith *vs.* The State Bank of Illinois—see the return; and that the attachment only authorized the seizure of such property as would have belonged to the bank had it not ceased to exist, and only the W half of the SE ¼ of sect. 32, t. 1, range 2 east, was seized by the attachment.

2. The service of process was on John Bracken, "said to be an agent of the bank;" no publication, no other service. The affidavit shows that the corporation was dead; therefore no person or party could appear for the dead corporation without some proper legal authority and appointment.

3. There was no such coporation as the State Bank of Illinois; the "President, Directors and Company of the State Bank of Illinois," being the sole corporate name whereby the said corporation
335 existed and might sue and be sued.

4. The record shows that on the 17th day of Nov., A.

D. 1855, the judgment was reversed by the Supreme Court, and that on April 3, 1857, remittitur was filed in the La Fayette county Circuit Court, reversing the judgment.

5. The record shows that on the 21st day of April, 1858, the plaintiff was non-suited, the writ of attachment was quashed and the defendant discharged.

6. The record shows that at the time of the sheriff's sale, July 23, 1855, the execution had no clerk's seal, as required by law, and only authorized the sheriff to seize and levy upon the lands and property of the defendant, The State Bank of Illinois.

7. The record shows that the sale of the premises in controversy was set aside by the Circuit Court May 25, 1857, and that Corwith, Scales, and Earnest, appealed to Supreme Court; Scales was bondsman for Earnest on the appeal, June 22, 1857.

8. The record shows a deed copied therein from the "President, Directors and Company of the State Bank of Illinois," to three assignees and trustees, executed October 31, 1848, conveying all real estate from said corporation; which deed is a part of the record of the trial, A. D. 1854.

9. The record shows no judgment was signed or filed, as the law required. (R. S. 1849, S. 15, p. 536, and S. 15;) and the judgment was not valid, nor authority for any proceeding thereon, without such signing and filing.

10. The record shows that the judgment was reversed, and that the plaintiff in error was successful subsequently before the Circuit Court; therefore the lien of the judgment ceased and the certificate of sale fell therewith. R. S. 1849, page 535, sect. 6.

336 11. The corporation being dead, a judgment against the same is a nullity.

12. The Wisconsin legislature, act 1853, page 102, under which this Corwith suit was begun, was void, because unconstitutional in seeking to legislate away the property of trustees and assignees, divesting vested rights and impairing the obligation of contracts, and all proceedings authorized thereby are void. James Campbell owned the legal title.

13. The record shows, and it is a matter of fact, that the President, directors and company of the State Bank of Illinois had no interest or title in the premises at the time of the trial and judgment that was subject to levy or sale or seizure; the property, as far as the bank was concerned, having been conveyed by deed to assignees, and so far as the legal title was concerned it was vested in James Campbell by the deed of trust dated Nov. 2, 1842.

14. For divers other reasons and objections, irregularities and informalities appearing upon the face of the record.

15. The remittiturs were all filed since the former trial of this suit, and no notice has been given of any defence upon any matters arising since action brought.

Which objections said judge did then and there severally overrule, and decide that the said record should be read in evidence in behalf of said defendant, to which overruling and decision said plaintiff's counsel did then and there except.

Said defendant further produced and offered in evidence a sheriff's deed of the premises to the defendant, based upon the foregoing Corwith judgment and record and dated March 17, 1868, by John Sutter, sheriff of said La Fayette county, to defendant, and
337 recorded March 20, 1868, of which deed the following is a copy:

Sheriff La Fayette county to Samuel H. Scales.—Received for record March 20th, A. D. 1868, *at* 5 *o'clock p. m.*

This indenture, made this seventeenth day of March, in the year of our Lord eighteen hundred and sixty-eight, between John Sutter, esquire, sheriff of the county of La Fayette and State of Wisconsin of the first part, and Samuel H. Scales, of the county of La Fayette and State of Wisconsin, party of the second part, witnesseth, that whereas the lands hereinafter mentioned and described were attached at the suit of one Henry Corwith, against the State Bank of Illinois, and which suit was commenced in the Circuit Court for the county of La Fayette and State of Wisconsin aforesaid, and in which suit the State Bank of Illinois aforesaid appeared, and thereafter in the said Circuit Court said cause was tried upon its merits, and verdict and judgment rendered and entered in the said action in favor of the said Henry Corwith, and against the State Bank of Illinois aforesaid; and whereas also by virtue of a certain writ of execution issued out of and under the seal of the said Circuit Court for said county of La Fayette and State of Wisconsin, tested the twenty-third day of April, in the year of our Lord eighteen hundred and fifty-five, at the said suit of said Henry Corwith, plaintiff, against the State Bank of Illinois aforesaid, defendant, directed and delivered to Ammi Dodge, the then sheriff of the said county of La Fayette and State of Wisconsin, commanding him that of the goods and chattels of the said defendant he should cause to be made certain moneys in the said writ specified and if sufficient goods and chattels could not be found, that then he should cause the amount so specified to be made out of the real estate which the said defendant had on a day in the said writ mentioned, or at any time afterwards in whose hands soever the same might be, the said Ammi Dodge, sheriff as aforesaid, by his deputy Oscar M. Dering, did levy on and seize all the estate, right, title and interest, which the
338 said defendant so had of, in and to the lands and premises hereinafter conveyed and described; and on the twenty-third day of July, in the year of our Lord eighteen hundred and fifty-five, sold the said several parcels of land and premises at public vendue at the court-house in the village of Shullsburg, in the said county of Lafayette and State of Wisconsin, having first given public notice of the time and place of such sale, by advertising the same according to law, at which sale the said parcels of land and premises were struck off to James H. Earnest for the sum of six hundred and fifteen dollars in the whole, he being the highest and best bidder for each parcel and that being the highest sum bidden for the same.

And whereas all the said parcels of land and premises after the

expiration of twenty-seven months from the time of said sale remained unredeemed, and no creditor of the State of Illinois aforesaid hath acquired the right and title of said purchaser according to the statute in such case made and provided, and by means of which premises, and by force of the statute, the said Samuel H. Scales, as assignee of said purchaser, hath become entitled to a deed of conveyance of the said lands and premises.

And whereas also, on the fourteenth day of May, in the year of our Lord eighteen hundred and fifty-eight, the said James H. Earnest for value received duly and legally assigned all his right, title and interest of, in and to the certificate of said sale, and the lands and premises therein described, to Samuel H. Scales the said party of the second part; and whereas also the said John Sutter is the successor of the said Ammi Dodge in the office of sheriff, and by the statute fully authorized to convey the said lands and premises:

Now therefore this indenture witnesseth, that the said party of the first part, by virtue of the said writ, and in pursuance of the statute in such case made and provided, and in consideration
339 of the sum of money so bidden as aforesaid, to the said Ammi Dodge late sheriff of said county of La Fayette and State of Wisconsin, duly paid, hath sold, and by these presents doth grant and convey unto the said party of the second part, all the estate, right, title and interest which the State Bank of Illinois aforesaid had on the sixteenth day of August, in the year of our Lord eighteen hundred and fifty-three, being the day when the same were so as aforesaid attached, as also, on the twentieth day of October, in the year of our Lord, eighteen hundred and fifty-four, being the day when judgment was rendered and entered against the State Bank of Illinois, defendant, and in favor of the said Henry Corwith, plaintiff, as aforesaid, or at any time afterwards of, in and to all those certain tracts, pieces or parcels of land lying and being in the county of La Fayette and State of Wisconsin, known, designated and described as follows, to wit: the east half of the southeast quarter of section number thirty-two, (32,) in township number one (1) north of range number two (2) eastof the fourth principal meridian; and also the west half of the southeast quarter of said section thirty-two (32) in the township and range aforesaid.

To have and to hold the said above-mentioned and described lands and premises unto the said party of the second part, his heirs and assigns forever, as fully and absolutely as the said party of the first part, as sheriff aforesaid, can or ought to by virtue of the said writ, and the law relating thereto.

In witness whereof the said sheriff, party of the first part, hath hereunto set his hand and seal the day and year above written.

[L. S.] JOHN SUTTER,
Sheriff La Fayette County, Wisconsin.

Sealed and delivered in presence of—
P. A. ORTON, Jr.
CHAS. E. BRAWNER.

[Revenue stamp, five dollars, cancelled.]

The word "east" in the 14th line on the third page of this deed was interlined before the execution and delivery of this instrument.
Witness—

P. A. ORTON, Jr.

340 STATE OF WISCONSIN, *La Fayette County, ss:*

On this seventeenth day of March, in the year of our Lord eighteen hundred and sixty-eight, before me personally came before John Sutter, esquire, sheriff of the county of La Fayette and State of Wisconsin, to me known to be the person described in and who executed the within and foregoing deed of conveyance, and acknowledged that he executed the same in his capacity of sheriff of said county and State, and for the uses and purposes therin expressed.

[L. S.] D. W. KYLE,
Clerk Circuit Court La Fayette County, Wis.

T. C. L. MACKEY, *Register.*

STATE OF WISCONSIN, *County of La Fayette, Register's Office, ss:*

I, T. C. L. Mackay, register of deeds in and for said county, in the State aforesaid, do hereby certify that I have carefully compared the above and foregoing copy of sheriff's deed to Samuel H. Scales, which said deed is recorded in volume 9 of deeds, on pages 499 and 500, with the original record thereof, preserved in my said office; that the same is a true and correct transcript therefrom and of the whole thereof.

Given under my hand and the seal of my said office at Darlington, in said county, this 6th day of April, A. D. 1868.

[SEAL.] T. C. L. MACKAY, *Register.*

[5-cent revenue stamp, cancelled.]

Endorsed: Certified copy. Sheriff's deed. State Bank of Illinois by sh'ff to Samuel H. Scales. Fees, $1 25.

But to the reading of the same in evidence said plaintiff's counsel did then and there object, and assign as causes of objection—

First. For all the reasons and objections heretofore severally given against the introduction of the judgment record of
341 the Corwith *vs.* State Bank of Illinois suit, and each and every of them.

Second. The sale to Earnest had been set aside by the Circuit Court, May 25, 1857; and on June 22, 1857, Corwith and Earnest, with def't as their bondsman, appealed therefrom to the Supreme Court, and this appeal was not determined nor the order reversed until August 11, 1858, nor was the remittitur of such reversal filed in La Fayette county until December 9, 1867. But this action, on trial now at bar, was commenced in 1865, and said deed recites that said Earnest assigned his certificate of sale May 14, 1858, while said appeal was as yet undetermined and said order setting aside said sale yet stood in full force.

Third. There is no proof of an assignment by Earnest to def't of

his sheriff's certificate of sale, such as the law requires; such assignment could only be by writing; and the certificate has not been introduced nor shown. The sheriff's deed no evidence of such assignment.

See. R. S. 1849, p. 388, § 6; and p. 544, § 83 and 84.

Fourth. Said deed recites that Earnest assigned the certificate of sheriff's sale to def't May 14, 1858, which was after the sale had been set aside after the judgment in Corwith's favor had been reversed, the writ quashed, the def't State Bank of Illinois had been discharged; all this was known to def't Scales, and to Earnest, at the time of such alleged assignment; Scales, therefore, was assigned with notice of a void certificate, and took nothing thereby.

Fifth. Said deed was executed since the beginning of this suit, and since issue joined; the remittitur was not filed in La Fayette county, showing a reversal by the Supreme Court of the Circuit Court order of the sheriff's sale to Earnest of the premises in question, until December 9, 1867, no notice nor special plea nor supplemental
342 answer, nor plea, puis darrien continuance, has been filed by def't in this cause, whereby said deed or remittitur, filed since issue joined, could become competent testimony.

Sixth. Sheriff's deed executed March 17, A. D. 1868, is void because executed by a sheriff after service of an injunction restraining him from executing such deed.

The injunction was dated and granted by the Circuit Court, in the Corwith suit, June 23, 1858, on the petition and affidavit of John Bracken, dated June 21, 1858, and said petition, affidavit and injunctional order, were filed in the clerk's office of La Fayette county, where said Corwith suit arose and defended July 2, 1858. A copy of this injunction was served on John Sutter, sheriff, September 28. 1867. The sheriff so served is the identical person who, as such officer, executed this sheriff's deed, to which we now object.

Seventh. Because the legal title was in James Campbell, by virtue of the trust deed executed November 2, 1842, recorded November 19. 1842, conveying said premises.

Eighth. Said Campbell, so owning and holding the legal title to the premises, was never made a party to said Corwith suit, and had never been divested by attachment, judgment, execution, sheriff's sale or deed, of said premises; but had legally and duly conveyed the premises to the plaintiff, his grantee.

Ninth. For other errors, informalities, manifest upon said sheriff's deed, and upon the proceedings whereon said deed is founded.

Which objections said judge did then and there severally overrule, and decide that said sheriff's deed to def't should be read in evidence in said defendantcs behalf; to which overruling and de-
343 cision said plaintiff's counsel did then and there except.

And thereupon said defendant rested his cause.

And thereupon said plaintiff, further to maintain and prove said issue on his behalf, produced James Campbell, a witness for said plaintiff, who, after being duly sworn, did depose as follows:

"I am the person named as trustee in Gear's deed of trust to me,

dated Nov'r 2, 1842; at that time I was cashier of the Branch Bank of the Illinois State Bank, located at Galena; in 1841 I became cashier, and remained as cashier and agent of the bank during 1842; at the date of the deed of trust, Nov. 2, 1842, I, as agent and cashier of the bank, and directed by Col. Thomas Mather, president of the State Bank, had a settlement with Gear; everything was included in the settlement; the Gear mortgage for $135,000 was included, and was paid by Gear in full, and the notes were delivered up to Gear, 5 in number; I was directed to satisfy the mortgage on the record; this was done in Illinois, and if not in Wisconsin, the neglect was purely accidental; the deed of trust to me was taken in full satisfaction of the mortgage, and by the settlement, Gear's whole indebtedness to the bank was paid and satisfied in full, and thereafter he owed nothing whatever to the bank on the mortgage, dated in 1838, or upon anything else; it was a complete settlement by Gear of all his business affairs with the bank up to that time. I was and am trustee of said bank since April 1, 1859."

344 Here defendant's counsel admitted that Samuel H. Scales, the def't, is the identical Samuel H. Scales, the person who was one of the jurors before whom the cause of Henry Corwith *vs.* The State Bank of Illinois was tried in La Fayette county Circuit Court, A. D. 1864.

Said plaintiff, further to maintain and prove said issue in his behalf, produced James H. Earnest as witness, who, being duly sworn, did depose as follows:

"I know the premises in controversy; I am the identical person who bid them in at the sheriff's sale, in the case of Henry Corwith *vs.* The State Bank of Illinois, in 1855; I assigned my certificate of sale to Samuel H. Scales, the def't; at and before the sheriff's sale, I knew from what everybody said that the bank had made an assignment to the trustees for the purpose of winding up its affairs, and the lands I bid in were included; I remember of hearing it spoken of frequently; this I knew at and prior to the sale; I understood also, the trustees denied the right of the sheriff and Corwith to sell; this I understood at and before the sale; I knew there was a question about the title at the time; before the sale I understood Mr. Corwith had said he would indemnify any purchaser at the sheriff's sale from any loss; I felt Mr. Corwith would stand by us in case we had trouble, or in case we should lose the land; I felt he would save me from loss, but I never had any understanding with Mr. Corwith to that effect."

345 Said plaintiff, further to maintain and prove said issue on his part, produced John Bracken as witness, who, being duly sworn, did depose as follows:

"I live in Mineral Point, Wisconsin; was in 1853 agent of the trustees of the State Bank of Illinois; have known defendant since 1838, and since that year he has resided in La Fayette county, Wisconsin, 3 or 4 miles from the land in controversy; in 1853 I had notice published in the 'Galena Gazette,' 'Mineral Point Tribune,' 'Grant County Herald,' and the 'Madison Journal,' signed by the trustees, offering all the lands formerly owned by the bank for sale;

I had hand bills freely circulated to the same effect; had them distributed all through La Fayette and Iowa counties on the day appointed in them for the sale of the lands in La Fayette county at Shullsburgh, the place appointed for the sale; I was there and think I saw Mr. Scales, the def't, there also; of this I am quite certain, and that I talked with him on that day; Mr. John Calhoun was there also, and I think James Campbell; an attachment was served by Henry Corwith on the lands, and the trustees publicly adjourned the sale in consequence; notice was given that payment would be received by them, the trustees, in the money of the State Bank. I gave public notice at that time that the sale was postponed; this was done in consequence of Corwith's attachment. I think that def't was there at the time."

Said plaintiff, further to maintain and prove said issue on his behalf, called as a witness the defendant, Samuel H. Scales, who, being duly sworn, did depose as follows:

"I have no recollection of being in Shullsburgh on the day appointed for the trustee's sale; I might have been; am not positive; I have talked with Mr. Bracken, and he thinks I was. I did not know much about the title of the trustees of the Illinois State Bank;
346 had heard of an assignment; I supposed the trustees owned the lands, or Corwith wouldn't have attached them. I was a juror on the trial of the Corwith case, and heard all the papers that were read before the jury."

Said plaintiff, further to maintain and prove said issue in his behalf, produced and read the following deposition of Cephas Foster, of Galena, Illinois, showing that in 1852 and 1853 the def't, Scales, was a subscriber to the Galena Weekly Gazette; and that for four weeks, beginning May 31, 1853, an advertisement in said paper, signed by the three trustees, notified the public of the sale of the lands in which the bank formerly had an interest.

STATE OF ILLINOIS, *Jo Daviess County, City of Galena, ss*:

Be it remembered that on the fifth day of September, in the year of our Lord one thousand eight hundred and sixty-seven, I, Louis Shessler, mayor of the city of Galena, in said county of Jo Daviess, and State of Illinois, under and by virtue of the annexed notice, and of the acts of Congress, entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed February 20, 1812, and the acts of Congress entitled An act in addition to an act entitled, An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed September 24, 1789, did call and cause to be and personally appear at my office in the city of Galena, in Jo Daviess county, in the State of Illinois, and in the northern district of Illinois, Cephas Foster, to testify and the truth to say on the part and behalf of the plaintiff, in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States for the district of Wisconsin, at Milwaukee, in the State of Wisconsin, wherein Richard

H. McGoon, is plaintiff, and Samuel H. Scales is defendant; and the said Cephas Foster, being about the age of 58 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, I did carefully examine the said Cephas Foster, and he did thereupon depose, testify and say as follows, viz:

1st interrogatory. State your name, age, residence, and occupation.

Answer. Cephas Foster; age, 58 years; my place of residence is Galena, Illinois; occupation, that of insurance agent.

2d interrogatory. State what was your occupation from the year A. D. 1850 to the year A. D. 1857.

Answer. I was a member of the firm of H. H. Houghton & Co., publishers of the weekly North Western Gazette, and Galena Daily Advertiser, and published at Galena, in the county of Jo Daviess, and State of Illinois.

3d interrogatory. Are you acquainted with the parties, plaintiff and defendant, in these interrogatories named, and how long have you known them, respectively?

Answer. I am; I have known Mr. Samuel H. Scales since 1851 or 1852. Mr. Richard H. McGoon I did not know at that time; I have formed his acquaintance since.

4th interrogatory. State whether or not the defendant, Scales, was a subscriber to the Weekly North Western Gazette, during the time that you were a member of the firm of H. H. Houghton & Co., and publishing said paper. If so, state during what years he was such subscriber.

(Objected to by defendant's counsel as irrelevant matter and not competent testimony on the issue joined between the parties to this cause.)

Answer. The name of Samuel H. Scales appears on the subscription list to the Weekly North Western Gazette from June, A. D. 1852, to June, A. D. 1854, and the Weekly North Western Gazette was regularly mailed to that address during that time.

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(The defendant's counsel objects to that portion of witness' answer relating to the mailing of the paper to defendant's address, as not responsive to the interrogatory.)

5 interrogatory. State whether or not you know of your own knowledge that the defendant Scales was a subscriber to the Weekly North Western Gazette from June, 1852, to June, 1854. State your means of knowledge.

(Objected to by defendant's counsel as an inquiry into irrelevant matter, and as incompetent testimony in the issue in this cause.)

Answer. When I became a member of the firm, I think his name was on the subscription list, and during one of those years he paid me in person the price of the subscription to the paper, remarking that he himself never read it, that his wife wanted it.

(The plaintiff's counsel objects to that portion of the witness' answer which reads as follows, "remarking that he himself never read it, that his wife wanted it," as being uncalled for and not re-

sponsive to the question, and as proving statements of defendant in his own favor.)

6th interrogatory. State how the defendant Scales obtained the Weekly North Western Gazette, during the period of time from June, 1852, to June, 1854; whether or not he obtained it regularly, whether he obtained it in person or by mail, and if by mail, whether or not it was mailed regularly to him.

(Objected to by defendant's counsel as an enquiry into irrelevant matter, and as incompetent testimony in the issues in this cause.)

Answer. It was sent to his address by mail, and mailed each week regularly.

7th interrogatory. State whether or not, during the period
349 from June, 1852, to June, 1854, an advertisement for the sale of lands by the trustees of the State Bank of Illinois was published in the Weekly North Western Gazette; if so, state how long the same was so published and at what period of time, and attach to this your deposition a copy of said advertisement.

(Objected to by defendant's counsel as an inquiry into irrelevant matter, and as incompetent testimony in the issue in this cause, and as assuming on the part of the witness a knowledge of who such trustees were, and of the fact that they authorized said publication.)

Answer. Such an advertisement was published with the names of such trustees attached. It was inserted during four weeks in the Weekly North Western Gazette, the first of which publications was on the 31 day of May, 1853. Mr. James Campbell, representing himself as agent for said trustees, paid me for said advertisement. The following is a true copy of said advertisement:

Bank lands at public sale, without reserve.

The trustees of the State Bank of Illinois, in order to close up its affairs, will hold final sales of the bank property at the times and places mentioned below. The property will in all cases be sold to the highest bidder, without limit or reserve. One-fourth of the purchase money will be required at the sale, and a credit of twelve months will be given on the remainder. The sale will commence at one o'clock p. m.

The outstanding bonds, certificates and notes of the State Bank will be received at par at the sales, and on payment of notes given by purchasers.

Holders of these evidences of bank indebtedness are respectfully advised to attend, or be represented at the sale.

350 At Galena, on Thursday, 16th June, 1853, lots 3, 4, and part of 2, block 11, east side Galena river.

Lots 1, 2, 3, block 10, do do do do, on which is a large frame dwelling-house.

Lots 17, 18, Bench street, on which are the buildings formerly used for the banking house.

Part of S hf of NE qr sec 3, t 28, 1 e, 52 acres, 4 miles from Galena.

Information respecting the above property may be obtained of

Messrs. Foster & Stahl; and of the following real estate in Wisconsin of John Bracken, esq., of Mineral Point:

IN WISCONSIN.

At Shullsburgh, on Tuesday, 21st June, the following lands in La Fayette county:

S hf SE qr sec 10, 2, 1 e, 80 acres.
W hf SW qr sec 22, 2, 1 e, 80 acres.
W hf NW qr sec 17, 3, 1 e, 80 acres.
South part E hf NW sec 18, 3, 1 e, 60 acres.
E hf SW sec 19, 3, 1 e, 80 acres.
W hf SE sec 28, 4, 1 e, 80 acres.
SW qr sec 33, 4, 1 e, 160 acres.
SW qr sec 31, 1, 2 e, 158 68-100 acres.
E hf NE qr sec 31, 1, 2 e, 80 acres.
SE qr sec 31, 1, 2 e, 160 acres.
W hf NW qr sec 32, 1, 2 e, 80 acres.
Part E hf NW qr sec 32, 1, 2 e.
North of Gear's addition to White Oak Springs:
Part E hf NW qr sec 32, 1, 2 e, 22 acres.
South of Gear's addition, &c.
Part of do, sec 32, 1, 2 e.
SE NE sec 32, 1, 2 e, 40 acres.
All of SW sec 32, 1, 2 e, 80 acres.
West of brook running north and south through the quarter undivided hf W hf NE sec 2, 2, 2 e, 43.51 acres.
Undivided one-third E hf SW, and SW SW sec 9, 3, 2 e, 351 40 acres.
Fraction No 2, sec 7, 2, 4 e, 12.25 acres.
Fraction No 1, sec 33, 2, 4 e, 45.42 acres.
E hf NW sec 33, 2, 4 e, 80 acres.
NE fr 4 of SW qr sec 33, 2, 4 e, and W fr 5 of SE qr sec 33, 2, 4 e, 92.36 acres.
E hf SW sec 31, 3, 4 e, 80 acres.
Undivided $\frac{1}{3}$ E hf NE sec 5, 2, 5 e, 26.67 acres.
Undivided $\frac{1}{3}$ W hf NE sec 8, 2, 5 e, 26.67.
Undivided $\frac{1}{3}$ W hf NW sec 9, 2, 5 e, 26.67 acres.
W hf SE qr sec 26, 2, 5 e, 80 acres.
E hf SE qr sec 31, 2, 5 e, 80 acres.
W hf SE sec 31, 2, 5 e, 80 acres.
E hf SE sec 32, 2, 5 e, 80 acres.
W hf SW sec 32, 2, 5 east, 80 acres.
E hf NW sec 35, 2, 5 e, 80 acres.
Undivided hf NE sec 35, 2, 5 e, 80 acres.
W hf SE sec 36, 2, 5 e, 80 acres.
Undivided hf W hf SW sec 29, 3, 5 e, 40 acres.
do hf NW sec 33, 4, 5 e, 80 acres.
do hf NW sec 33, 4, 5 e, 80 acres.

Undivided hf E hf NE sec 33, 4, 5 east, 40 acres.
NW NE sec 33, 4, 5 east, 40 acres.

At Plattville, on Friday, 24th June, the following lands in Grant county:

E hf SE qr sec 13, 2, 1 w, 80.
E hf SW qr and SW NE sec 26, 4, 1 w, 120 acres.
W hf NE sec 5, 1, 2 w, 77.66 acres.
W hf SE sec 5, 1, 2 w, 80 acres.
E hf SW sec 5, 1, 2 w, 80 acres.
Undivided hf NW sec 29, 2, 2 w, 80 acres.
do E hf NE sec 30, 2, 2 w, 40 acres.
E hf SE sec 34, 2, 2 w, 80 acres.
E hf SW sec 34, 2, 2 w, 80 acres.
W hf SW sec 17, 8, 2 w, 80 acres.
NW qr sec 19, 8, 2 w, 159.45 acres.
SE SW sec 2, 2, 3 w, 40 acres.
SE qr sec 4, 2, 3 w, 160 acres.
352 E hf SW sec 4, 2, 3 w, 80 acres.
NE of NW fr qr sec 9, 2, 3 w, 40 acres.
S fr of NW qr sec 9, 2, 3 w, 40.77 acres.
NW qr sec 32, 3, 3 w, 160 acres.
SE qr sec 32, 3, 3 w, 160 acres.
SW qr sec 33, 3, 3 w, 159 80-100 acres.
W hf SE qr sec 13, 8, 3 w, 80 acres.
SW qr sec 11, 3, 5 w, 160 acres.
Undivided $\frac{1}{3}$ N hf, and W hf SW qr sec 17, 3, 5 w, 133.33 acres.

At Mineral Point, on Tuesday, 28th June, the following lands in Iowa county:

E hf NE qr sec 2, 4, 1 e, 75.86 acres.
W hf NW sec 2, 4, 1 e, 77.41 acres.
Undivided qr W hf NE sec 34, 5, 1 e, 20 acres, except $\frac{1}{4}$ interest in Dallas town lots.
W hf SW sec 17, 6, 1 e, 80 acres.
E hf SW sec 17, 6, 1 e, 80 acres.
E hf NW sec 20, 6, 1 e, 80 acres.
W hf NW sec 20, 6, 1 e, 80 acres.
W hf SE sec 30, 7, 1 e, 80 acres.
E hf SW sec 30, 7, 1 e, 80 acres.
E hf SE sec 31, 7, 1 e, 80 acres.
W hf SE sec 31, 7, 1 e, 80 acres.
W hf SW sec 32, 7, 1 e, 80 acres.
Undivided qr SE qr, and E hf SW qr sec 8, 8, 1 e, 120 acres.
Undivided hf NE qr, and E hf NW qr sec 17, 8, 1 e, 120 acres.
E hf SE sec 10, 4, 2 e, 80 acres.
NW qr sec 14, 4, 2 e, 160 acres.
W hf SE qr and NE SE sec 35, 5, 2 e, 120 acres.
NW qr sec 30, 6, 4 e, 140.99 acres.

N. H. RIDGELEY,
JOHN CALHOUN,
May 27. URI MANLY, *Trustees.*

353 After the cross-examination of witness was concluded, and while the plaintiff and his counsel were present, and before the deposition was subscribed, the defendant's counsel objected to that portion of the above answer wherein Mr. Campbell is stated as representing himself as agent of said trustees, on the ground of its being hearsay.

Cross-examination.

By D. W. Jackson, attorney for defendant:

1st cross-interrogatory. Do you know, and if so state when it was that the defendant paid you the money for his subscription?

Answer. He paid me four dollars for two years' subscription to the Weekly North Western Gazette in September, A. D. 1853.

2d cross interrogatory. What did he say, if anything, at the time he paid you that money, relative to reading the paper?

(Objected to by plaintiff's counsel for the reason that it is not a proper matter of cross-examination, and for the reason that it is calling out statements of the defendant, not under oath, as testimony for himself in this.)

Answer. He said he never read the paper himself, but took it because his wife wanted it.

(The plaintiff's counsel objects to the answer for the same reasons he has objected to the cross-interrogatory.)

CEPHAS FOSTER.

Subscribed and sworn to before me, this 5th day of September, A. D. 1867.

LOUIS SHESSLER, *Mayor.*

STATE OF ILLINOIS,
County of Jo Daviess, City of Galena, ss:

I, Louis Shessler, mayor of the city of Galena, in the county
354 of Jo Daviess and State of Illinois, do hereby certify that the above deposition of Cephas Foster was taken before me at my office, on Main street, in said city of Galena, in said county and State, on the 5th day of September, A. D. 1867, at one o'clock in the afternoon of said day; that it was taken at the request of the plaintiff, Richard H. McGoon, upon verbal interrogatories propounded by his attorney, David Sheean, esq., and upon verbal cross-interrogatories propounded by D. W. Jackson, esq., who appeared as counsel for Samuel H. Scales, the defendant before mentioned; that it was reduced to writing by myself; that it was taken to be used in the action and cause of Richard H. McGoon, plaintiff, *vs.* Samuel H. Scales, defendant in ejectment, and now pending in the United States Circuit Court in and for the district of the State of Wisconsin; that the reason for taking said deposition was, that Cephas Foster, the witness, lives and resides in the said city of Galena, at a greater distance from the place of trial of said cause and action than one

hundred miles, and out of the district wherein said cause and action is pending; that a notice, of which the annexed is a true copy, was personally served on said Samuel H. Scales, on the 29th day of August, A. D. 1867, and that said Samuel H. Scales' attorney, D. W. Jackson, esq., attended the taking of said deposition; that said witness and deponent, Cephas Foster, before examination, was by me carefully examined and cautioned, and sworn to testify the whole truth, and nothing but the truth, relative to said cause and action; and that said deposition was carefully read to said deponent and witness by me, and then subscribed by him. And I further certify that said witness was at the time of said taking and is a man of full age, of sound mind, and that I am not counsel or attorney to either of the parties of said cause and action, and am in no wise in-
355 terested in the event of said cause and action.

In testimony whereof I have hereunto set my hand and official seal, at my office in the city of Galena aforesaid, this fifth day of September, A. D. 1867.

[SEAL.] LOUIS SHESSLER,
Mayor of the City of Galena.

[5-ct. int. rev. stamp, cancelled.]

Said plaintiff, further to maintain and prove said issue in his behalf, produced, as Gear's grantee, said Gear's original mortgage for $135,000, and called the court's attention to the condition mentioned in said mortgage. A certified copy of said mortgage here follows:

Rec'd December 9th, 1841, *at* 10 *o'clock a. m.*

This indenture, made at the town of Galena, State of Illinois, on this third day of November, anno Domino one thousand eight hundred and thirty-eight, between Hezekiah H. Gear and Deborah, his wife, of the town and State aforesaid, of the first part, and the president, directors, and company of the State Bank of Illinois, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one hundred and thirty-five thousand dollars, cash in hand paid to them, the receipt whereof is hereby acknowledged and confessed, from the aforesaid party of the second part, hath granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, convey, and confirm and release unto the said president, directors, and company of the State Bank of Illinois, and to their successor or successors in office, trustees or assigns, forever, all those certain lots of land situate and lying within the State of Illinois and the Territory of Wisconsin, as hereinafter described, namely:

In the town of Galena, lot number eight (8) on Main street, containing 4 24-100 of an acre of land, as per receiver's receipt
356 No. 111, dated Galena, 24th April, 1837, which said lot hereby conveyed fronts one hundred and fifty-six feet eight inches on Main street, and is bounded on the north by lot number nine, hereinafter conveyed; on the west by Bench street, fronting one

hundred and fifty-seven feet ten inches to same; and on the south by an alley dividing said lot number eight from lot number seven, as is particularly shown by the plat of the town of Galena, duly recorded, a part of said lot number eight being conveyed, subject to a ten-year lease from the first day of May last, to the vestry of the Protestant Episcopal Chapel of Galena, and comprises the southwest corner of said lot number eight, fronting forty-nine feet on Bench street, by thirty-one feet deep. Also, lot number nine (9) on Main street, containing 79-100 of and acre of land, as per receiver's receipt number one hundred and ten, dated Galena, 24th April, 1837, which said lot fronts thirty-three feet on Main street, running through the block of equal breadth to Bench street, bounding also thirty feet on same, as is particularly seen by the plat of the town of Galena, before alluded to in this deed and covenant. Also, lot number fifteen, on Main street, containing 118-1000 of an acre of land, as per receiver's receipt number 112, dated 20th April, 1837, which said lot number fifteen, hereby conveyed, fronts fifty feet on Main street, running through the block of equal width to Bench street, bounding also fifty feet on same, as is seen by the plat above alluded to. Also, lots number eight, (8,) nine, (9,) ten, (10,) eleven, (11,) and twelve, (12,) on Water and Bench streets, containing 1 31-100ths of an acre of land, as per receiver's receipt number 165, dated Galena, 4th December, 1837, which said lots comprise a whole block, and are bounded on the north by Gear street, on the east by Main street, fronting three hundred feet to same, on the south by South street, fronting two hundred and ninety-two feet to same, and on the west by Bench street, bounding two hundred and ninety feet thereon, as per plat of the town of Galena above referred to. Also, lot
357 number seven (7) on Water and Bench streets, containing 87-1000 of an acre of land, as per receiver's receipt number 236, dated Galena, 28th March, 1838, which lot is of irregular shape, and is situated at the corner of Gear and Main streets, fronting fifty feet to Main street, as per plat aforesaid. Also, lots number nineteen, (19,) twenty, (20,) and twenty-one, (21,) on Bench and Prospect streets, as per receiver's receipt No. 167, dated 4th December, 1837, and recorded plat of Galena, aforesaid. Also, the whole of lots number fifteen, (15,) sixteen, (16,) seventeen, (17,) and eighteen, (18,) on Bench and Prospect streets, as per receiver's receipt No. 167 aforesaid, with the exception of such irregular of said lots 15, 16, 17, and 18, as have been deeded by said Gear to E. B. Kimbal, of Galena, as per deed of record bearing date 10th September, 1838. Also, lots number ten, (10,) eleven, (11,) twelve, (12,) fourteen, (14,) fifteen, (15,) sixteen, (16,) and seventeen, (17,) in block number thirteen. (13.) situate on South High and Prospect streets, as per receiver's receipt number one hundred and sixty-six, dated Galena, 4th December, 1837, and as per platt of the town of Galena. Also, lot number fourteen in square number nineteen, per receiver's receipt number 168, dated 25th July, 1838; lot number ten, (10,) in square number fourteen, (14,) per receiver's receipt No. 599, dated 23 July, 1837; and lot number twenty, (20,) in square number nine,

(9,) per receiver's receipt number 454, dated 17th July, 1838, the situation of which lots will fully appear by the reference to the platt of Galena referred to. Also, a part of lot number two, on Main and Bench streets, fronting thirty feet to each of said streets, and running the block of equal width, bounded on the south by lot number one on said streets, and on the north by the remainder of said lot number two. The whole of the foregoing property hereby conveyed is situated in the town of Galena and State of Illinois.

Also, the following tracts of land, being the same as entered by said Gear at the Mineral Point land office, viz: The south
358 fraction three (3) of southwest quarter of section number nine, (9;) the northeast quarter of the northwest fractional quarter of section nine, (9;) the east half of the southwest quarter, and the southwest quarter of section number four, all of township number , of range number three west, and situate in the county of Grant and Territory of Wisconsin. Also, a tract of one hundred and sixty acres of land, situate in the county of Iowa, in the Territory of Wisconsin, being the southeast quarter of section number thirty-one, (31,) in township number one, (1,) of range number two east, the same as entered by the said Gear at the Mineral Point land office, on the 10th of February, 1836. Also, the following described lot of land, in the county of Iowa and Territory of Wisconsin, being the same as deeded to the said Gear by John Atchinson, of Galena, per deed bearing date 12th January, 1836, and duly recorded at Mineral Point, in book A, pages 24 and 25, to wit: The northwest quarter, the southeast quarter, and the south half of the east half of the northeast quarter of section number thirty-two; the southwest quarter and the northeast quarter of section number thirty-one; and all that part of the southwest quarter of section number thirty-two lying west of a brook running north and south through same; all in town. one north, of range two east, which said tracts of land contain seven hundred and sixty acres, more or less:

To have and to hold the above-described lots of land, together with all and singular the buildings, improvements, privileges, and appurtenances thereunto in anywise belonging or appertaining, unto the said president, directors, and company of the State Bank of Illinois, and to their successors in office, trustees, assigns, or receivers forever. And the said party of the first part, for the consideration aforesaid, hereby bind themselves, their heirs, executors, administrators, and assgins, to warrant and forever defend the said deeded property unto the said party of the second
359 part, their successors, trustees, receivers, or assigns, from and against the claim or demand of them, the said party of the first part, their heirs, executors, administrators, or assigns, and from and against the claim or demand of all persons whatsoever.

Now, the condition of this deed and covenant is such, that whereas the said Hezekiah H. Gear has executed his five several notes of hand, each bearing date the twenty-seventh day of June, 1838, and each payable to the president, directors, and company of the State Bank of Illinois, at their branch at Galena, one payable at one year after

date, for twenty thousand dollars; one payable two years after date, one payable at three years after date, and one payable at four years after date, each for thirty thousand dollars; and one payable at ten years after date, for twenty-five thousand dollars; and all payable with interest from their dates, at the rate of six per centum per annum, payable annually:

Now, if the said Gear shall well and truly pay, at or before maturity, unto the said party of the said part, his several notes as above described, and well and truly pay all the interest that may accrue on same, then this deed and covenant, in every part thereof, shall be uterly null and void; but should said party of the first part fail well and truly and in good faith to pay the said described notes, together with all the interest that may accrue thereon, then this deed shall be in full force, virtue, and effect.

In witness whereof the said parties of the first part have hereunto affixed their hands and seals the day and date first above written.

The word quarter inserted on this page on the 7th line previous to signing.

[SEAL.] H. H. GEAR.
[SEAL.] DEBORAH GEAR.

Witness:
H. H. GEAR.
U. S. GILLMAN.

STATE OF ILLINOIS, *Jo Daviess County*:

360 This day personally came before the undersigned, a justice of the peace in and for said county, H. H. Gear, who is personally well known to me to be the real person who signed the within instrument of writing or mortgage, and acknowledged that he had signed the same, as his free and voluntary act, for the uses and purposes therein mentioned. And Deborah Gear, wife of the said H. H. Gear, being by me examined seperate and apart from her husband, and being by me made acquainted with the contents of the written instrument of writing or mortgage, acknowledged that she had signed the same freely and voluntarily, and without compulsion of her said husband.

Given under my hand and seal this 3rd day of November, A. D. 1838.

[SEAL.] T. A. LIVERMORE.

STATE OF WISCONSIN, *Jo Daviess County, ss*:

I, William H. Bradley, clerk of the County Commissioners' Court, in and for said county, do hereby certify that Thomas A. Livermore, whose name appears subscribed to the foregoing certificate of acknowledgment, was at the time of subscribing the same an acting justice of the peace in and for said county, duly commissioned and

qualified, and that as such justice full faith and credit are due his official acts.

In testimony whereof I have hereunto set my name and affixed the seal of said court, at Galena, this fourth day of December, A. D. 1841.

Attest:

[SEAL.] WILLIAM H. BRADLEY. *Clerk.*

STATE OF WISCONSIN, *County of La Fayette, ss:*

361 I, Thomas C. L. Mackay, register of deeds in and for the county of La Fayette, in the State of Wisconsin, do hereby certify that I have diligently and carefully compared the foregoing copy with the original instrument of writing or mortgage entered of record in my office, in volume one of mortgages, on pages 115, 116, 117, and 118, and that the same is a true, full, and correct transcript from and of said original instrument of writing or mortgage so entered of record in my office as aforesaid, and the whole of said original record.

In testimony whereof I have hereunto set my hand and affixed my official seal, at the village of Darlington, in said county and State, this 31st day of December, A. D. 1864.

(Signed) [L. S.] THOMAS C. L. MACKAY,
Register of Deeds in and for
La Fayette County and State of Wisconsin.

[5-cent stamp, cancelled.]

Certified copy of mortgage.—H. H. Gear and wife to State Bank of Illinois.

Said plaintiff, further to maintain and prove said issue in his behalf, produced and read in evidence a certified copy of the original petition and order of injunction, made by the La Fayette county Circuit Court, in said Corwith suit, June 25, 1858, and served on John Sutter, the sheriff who executed said sheriff's deed to defendant, subsequent to the service of such injunction, a copy of which petition, order of injunction, and proof of service thereof, on said John Sutter, sheriff, is as follows:

Petition and order of injunction.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

362 To the Hon. M. M. Cothren, judge of the 5th judicial circuit:

The petition of John Bracken respectfully shows to this hon. court, that your petitioner is the agent of the State Bank of Illinois; that on or about the 20th day of October, A. D. 1854, one Henry Corwith, by the consideration of the Circuit Court of the county of La

Fayette, obtained judgment against the State Bank of Illinois for sixteen thousand six hundred and eighty-seven dollars, together with eighty dollars and eighty-seven cents, costs of suit, from which judgment the State Bank of Illinois sued out and prosecuted their writ of error from the Supreme Court, and that such proceedings were had therein that on the 19th day of November, 1855, the Supreme Court reversed the judgment of the Circuit Court of the county of La Fayette, with costs, with directions to award a venire de novo to said Circuit Court.

Your petitioner would further show that afterwards, to wit, at the April term of the Circuit Court in and for the county of La Fayette. in the year 1858, being on the 21st day of April, 1858, the plaintiff in the court below asked and obtained leave to enter a non-suit, and therefore took nothing by his writ, and the same was quashed and set aside for naught.

Your petitioner further shows that the plaintiff in said suit, Henry Corwith, sued out from the Circut Court of La Fayette county on the 21st day of May, 1855, what purported to be three executions or writs of fieri facias, each for the full amount of said judgment and costs, but without any seal of the court attached to either of them. One of said pretended writs was directed and delivered to the sheriff of La Fayette county, one to the sheriff of Iowa county, and one to the sheriff of Grant county; that the sheriff of each of said
363 counties proceeded to and did, each of them, levy their said executions, or pretended executions, upon large tracts of valuable lands belonging to the State Bank of Illinois, situate, lying and being in each of the aforesaid counties; that the sheriff of the county of Grant did, on the 31st day of July, A. D. 1855, sell on said writ about twenty-two hundred and ten acres of said lands in that county, and gave to the different purchasers certificates of their said purchases.

That on the 14th day of July and 25th Aug't, 1855, the sheriff of Iowa county sold upon the said writ directed to him about ten hundred [hundred] and thirty acres of the lands of said State Bank to different individuals, and gave like certificates to the said purchasers.

And that on the 23d day of July, 1855, the sheriff of La Fayette county sold at public vendue, by virtue of said writ directed to him, about twenty-eight hundred and thirty-two acres of said land to different individuals, and delivered certificates to the purchasers therefor.

And your petitioners would further show that at the April term of the Circuit Court of La Fayette county, in the year 1857, by the consideration of said court, all of said executions were by the court set aside, quashed and declared null and void, as well as all sales made under them, for the reason they were issued and executed without any seal of said court, from which said decision an appeal was prayed for and obtained by said Henry Corwith to the Supreme Court, where it is now pending and undecided.

And the time having expired when the purchasers would have been entitled to deeds from the sheriff of each of the said counties, if the

aforesaid sale had been proper and legal, and as great and manifest injury and injustice would accrue to the State Bank of Illinois, and a multiplicity of law suits would be prevented if the deeds to
364 the different purchasers of said lands were withheld till after a final decision of the Supreme Court in the premises; and as the rights and interests of such purchasers can in no manner be compromised or jeopardised by the witholding the same—

Your petitioner therefore prays this hon. court to grant to the State Bank of Illinois an order of injunction directed to the sheriff of each of the counties, La Fayette, Grant, and Iowa, their under-sheriffs, deputies or attorneys, and each and every of them, commanding and restraining each and every of them from executing, making and delivering any deed or deeds to any purchaser or purchasers, his or their assignee or assignees, of all or any of the lands so sold by any sheriff on either of the aforesaid executions, in either of the aforesaid counties of La Fayette, Grant, and Iowa; and your petitioner will ever pray, &c.

JOHN BRACKEN, *Agent, &c.*

STATE OF WISCONSIN, *Iowa County, ss*:

John Bracken, being duly sworn, does depose and say, that he is the agent of the State Bank of Illinois, that he has read the above petition and knows the contents thereof, and that the same is true so far as his knowledge extends, and as to the remainder he believes it to be true.

JOHN BRACKEN.

Subscribed and sworn to before me this 21st June, 1858.

M. CORREN,
Clerk Circuit Court Iowa Co., Wis.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

LA FAYETTE COUNTY, *ss*:

It appearing satisfactorily to me by the affidavit of John Bracken, as contained in the above petition, that sufficient grounds for
365 an order of injunction exist, I do hereby order that the sheriffs of Iowa county, Grant county and La Fayette county, Wisconsin, each of them, refrain from executing deeds upon either or any of the executions specified in the above petition until the further order of this court.

Given under my hand this 25th day of June, A. D. 1858.

M. M. COTHREN,
Circuit Judge.

Filed in the clerk's office of the Circuit Court, July 2nd, 1858.

D. W. KYLE, *Clerk*,
By GEO. W. MILES, *Deputy.*

STATE OF WISCONSIN, *County of La Fayette, Clerk's Office, ss*: act-
st

I, D. W. Kyle, clerk of the Circuit Court of said county, do hereby certify that I have carefully compared the above and foregoing copy of the petition and order of injunction made and rendered in the above entitled action with the originals now on file in my said office, and that the same is a true and correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the official seal of said court, at Darlington, in said county, this 26th day of September, A. D. 1867.

[L. S.] Attest: D. W. KYLE, *Clerk.*

[U. S. rev. stamp, cancelled.]

In Circuit Court.

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS.

STATE OF WISCONSIN, *County of La Fayette, ss*:

L. D. Russell, of said county and State, being duly sworn,
366 says that he is the coroner in and of said county of La Fayette, and State of Wisconsin, duly commissioned and qualified; that on the 28th day of September, A. D. 1867, at the village of Darlington, in said county and State, he, as such coroner, did serve on John Sutter, the sheriff of said La Fayette county, in said State of Wisconsin, a true certified copy of the annexed order of injunction in the action above-entitled, personally, by placing and leaving the said true, certified copy of the annexed order of injunction in said John Sutter's hands, at the village, county and State aforesaid.

L. D. RUSSELL,
Coroner in and of La Fayette County, Wisconsin.

Sworn and subscribed before me this 28th day of Sept., A. D. 1867.

[L. S.] HENRY S. MAGOON,
Notary Public in La Fayette County, Wisconsin.

$2, paid by H. S. M.

STATE OF WISCONSIN, *La Fayette County, ss*:

I hereby certify and return, that I have this day duly served the within injunction upon the sheriff of La Fayette county, John Sutter, by showing him the original, and by giving him a true copy thereof.

This 28th day of September, 1867. So answers:

L. D. RUSSELL,
Coroner La Fayette County.

Fees.

Service	$2 00
Copy	1 40
Mileage	2 00
Total	$5 40

Said plaintiff, further to maintain and prove said issue in his behalf, produced John Sutter, said sheriff, by whom said sheriff's deed to def't was executed March 17, 1868, and offered by him, as a witness for said plaintiff, to prove:

That the defendant Scales had indemnified said sheriff by
367 bond from any loss that he might sustain by reason of executing said deed to defendant; and that said bond of indemnity was required by said sheriff from def't, before said sheriff would execute such deed to def't; and that the sheriff told def't that he was enjoined from executing a deed of the premises to def't; and that a certified copy of the petition and order of injunction had been served on sh'ff; and that the sheriff had no certificate of sale, nor did said def't have any certificate of sale present or in existence when said sheriff made said sheriff's deed; and that said injunction had been served upon said sheriff months previous to def't's application to him for the deed, and before the remittitur had been filed, showing that the Circuit Court order setting aside the sheriff's sale had been reversed; and that said injunction had in terms never been vacated or dissolved by the court.

To the giving of all which, or any part thereof, in evidence, said defendant's counsel did then and there object, which objection said judge did then and there sustain, and refuse to permit the plaintiff to prove said foregoing facts; to which refusal and decision of said judge said plaintiff's counsel did then and there except.

And thereupon the said plaintiff rested his cause.

The above and foregoing is all the evidence submitted or offered by either party at the said trial.

Whereupon said plaintiff's counsel did insist and ask said judge to instruct the jury in and by the several written instructions hereinafter given respectively, and did then and there argue and insist that each and every of the following instructions ought to be
368 given by said judge in said plaintiff's behalf, as follows:

Instructions for plaintiff.

RICHARD H. MCGOON
vs.
SAMUEL H. SCALES. } Ejectment.

First. If the jury find from the evidence that the mortgage executed by Hezekiah H. Gear and wife to the president, directors, and company of the State Bank of Illinois, November 3, A. D. 1838, and recorded December 9, 1841, was on the 2d of November, 1842, satisfied by said mortgagors, and that said mortgage and the notes hereby secured were on said day delivered up by the mortgagee and cancelled, then, both by the terms of said mortgage and the operation of law, said mortgage and all covenants thereof were thenceforth null and void.

Second. If the jury believe from the evidence that the deed of trust executed by H. H. Gear and wife to James Campbell, trustee, dated November 2, 1842, recorded November 19, 1842, was made or given

as security for a debt owed by said grantors unto the president, directors and company of the State Bank of Illinois, then such deed of trust was in effect a mortgage; and the rights and equities thereunder of said president, directors and company of the State Bank of Illinois were not divested by the attachment, judgment, and proceedings in the case of Henry Corwith *vs.* The State Bank of Illinois, nor by the sheriff's deed in this cause to the defendant; and you will, therefore, find for the plaintiff.

To the giving of which second instruction said judge did
369 then and there refuse, overrule, and deny and instruct the jury as follows: "The subsequent patent to Gear vested such interest in the bank by way of estoppel, through the covenants in said deed, as was the subject of sale in proceedings in pursuance of the act of the legislature."

To which refusal and decision said plaintiff's counsel did then and there except.

Thirdly. If the jury find from the evidence that the deed of trust executed by H. H. Gear and wife to James Campbell, trustee, dated November 2, 1842, recorded November 19, 1842, was made or given as security for a debt owned by said grantors to the president, directors, and company of the State Bank of Illinois, then such deed of trust was in effect, under the laws of Wisconsin, a mortgage; and the only means whereby the president, directors, and company of the State Bank of Illinois, or any persons claiming through or under them, could acquire the right of possession and title of said premises, as against said grantors and said trustee, would be by decree of foreclosure and sale; and no such foreclosure or sale having been made, the sheriff's deed offered in evidence in this cause, based upon the execution and sale and judgment of Corwith *vs.* State Bank of Illinois, operates as no defence, and you will therefore find for the plaintiff.

Russell *vs.* Ely; 2 Black, 575.

To the giving of which third instruction said judge did then and there refuse, overrule, and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Fourthly. When H. H. Gear and wife executed the deed of trust to James Campbell, trustee, on the 2d day of November, A. D. 1842, and therein covenanted to warrant and defend the premises thereby conveyed unto James Campbell, his heirs and assigns, by a
370 general covenant of warranty, said grantors had no title to the premises, the fee thereof being at that time in the United States, but when subsequently, on the first of September, A. D. 1852, said Gear, he having, on Nov. 3, 1851, purchased from the United States the premises, became owner in fee by patent from the United States, such title inured by estoppel to James Campbell, the grantee and covenantee in said deed of trust, and the beneficiaries mentioned in said trust deed had an interest thereunder only inforceable in equity, and such interest neither entitled them nor their assigns or grantees to the possession of said premises as against said James Campbell, his heirs, and assigns; nor is the sheriff's deed, offered in evidence by the defendant in this cause, such a defence as

authorizes him, the defendant, to hold and maintain the possession against the plaintiffs who is said Campbell's grantee.

To the giving of which fourth instruction said judge did then and there refuse, overrule, and deny; to which refusal and decision said plaintiff's counsel did then and there object.

Fifthly. Under the deed of trust executed by H. H. Gear and wife to James Campbell, trustee, on the 2d day of November, 1842, it is not competent for the defendant, Scales, even if the fact be conceded that he holds all the interest of the original beneficiaries named in such trust deed, to impeach in this cause the title, or to oppose the right of possession of said trustee or of his grantee, the plaintiff, to the premises described in the declaration.

To the giving of which fifth instruction said judge did then and there overrule and deny; to which refusal and decision said plaintiff's counsel did then and there except.

371 Sixthly. The sheriff's deed offered by the defendant in evidence, executed March 17, 1868, recorded March 30, 1868, subsequent to the issue joined, is inadmissible as testimony, no plea puis darrien continuance nor supplemental answer having been made or filed by the dfendant before the offering of such testimony in this cause.

To the giving of which sixth instruction, in the terms asked by plaintiff's counsel, said judge did then and there refuse, overrule, and deny; and did then and there decide that "under the practice of this court the plea is not guilty; aad the defendant may defend on a title acquired at any time before trial.

To which refusal and decision of said judge, and to every part thereof, said plaintiff's counsel did then and there except.

Seventhly. If the jury believe from the evidence that the plaintiff, McGoon, is a purchaser in good faith, and for a valuable consideration, of the premises described in the declaration, and that the conveyances to him of such premises were recorded as provided by law, prior to the commencement of this action, in the office of the register of deeds of La Fayette county, where the premises are situated, then the sheriff's deed, offered in evidence by the defendant, recorded March 20, 1868, is no defence to the plaintiff's action, and you must find for the plaintiff.

R. S. 1858, p. 541, § 25.

To the giving of which seventh instruction said judge did then and there refuse, overrule, and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Eighthly. If the jury believe from the evidence that the

372 injunction granted by the Circuit Court of La Fayette county, on the 25th day of June, 1858, restraining the sheriff of said county from executing any deed upon the executions issued in the cause, Corwith *vs.* State Bank of Illinois, until the further order of said court, and the affidavit and petition upon which said injunction was granted were served on John Sutter, sheriff of said county, on the 28th day of September, A. D. 1867, then no appeal from said injunctional order having been made, nor the same in terms dissolved, such sheriff, so served, had no power or authority in law to

execute the deed offered by the defendant in evidence; and you must find for the plaintiff.

To the giving of which eighth instruction said judge did then and there refuse, overrule, and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Ninthly. If the jury believe from the evidence that James H. Earnest, to whom the premises were sold at the sheriff's sale, July 23, 1855, had notice at the time of such sale that the State Bank of Illinois had assigned its property to trustees, including the premises mentioned in the declaration, and that such trustees denied the right of the sheriff and of Corwith to sell them, said Ernest purchased, subject to all rights of such trustees and of said assignment; and you must find for the plaintiff.

To the giving of which ninth instruction said judge did then and there refuse, overrule, and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Tenthly. If the jury believe from the evidence that Samuel
373 H. Scales, the defendant, at the time of the assignment to him by Earnest of the sheriff's certificate of sale of said premises, had notice of the assignment by the State Bank of Illinois to trustees, and that the Circuit Court of La Fayette county had set aside the sale for which the sheriff's certificate had been granted, then he is not an innocent purchaser without notice, and you must find for the plaintiff.

To the giving of which tenth instruction said judge did then and there refuse, overrule and deny, and did instruct, as follows: "The attachment proceedings and sale, being in pursuance of a law of the State, and the sale being sustained by the Supreme Court of the State, this instruction is answered in the negative," to which refusal and decision, and every part thereof, said plaintiff's counsel did then and there except.

Eleventh. Upon the law and facts of this case, you must find for the plaintiff.

To the giving of which eleventh instruction said judge did then and there refuse, overrule and deny, and decide that "the law and facts entitle the def't to a verdict in said cause;" to which refusal and decision said plaintiff's counsel did then and there except.

Twelfth. If the jury believe, from the evidence, that both Earnest and Scales bought with notice of the assignment by the State Bank of Illinois to trustees, you must find for the plaintiff.

To the giving of which twelfth instruction, said judge did then and there refuse, overrule and deny, to which refusal and decision said plaintiff's counsel did then and there except.

374 Thirteenth. If the jury believe, from the evidence, that both Earnest and Scales are not innocent purchasers, in good faith, and without notice of any writ of error having been prosecuted to the Supreme Court from the judgment of Corwith *vs.* State Bank of Illinois, then you must find for the plaintiff.

To the giving of which thirteenth instruction, said judge did then and there refuse, overrule and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Fourteenth. If the jury believe, from the evidence, that the judgment in the case of Corwith *vs.* State Bank of Illinois was reversed by the Supreme Court of Wisconsin, Nov. 17, 1855, and that subsequently, April 21, 1858, the plaintiff, Corwith, was non-suited by the Circuit Court of La Fayette county, the writ quashed, and the defendant discharged, then, the lein upon the defendant's real estate, in that action, was thenceforth annulled, and the sheriff's certificate of sale based on such judgment became of no effect, and you must find for the plaintiff.

R. S. 1849; p. 535, §6.

To the giving of which fourteenth instructions said judge did then and there refuse, overrule and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Fifteenth. Chapter 102 of the Wisconsin Session Laws of 1858, under which the Corwith suit was begun, in that it seeks to divest, by legislation, vested rights, and impair the obligation of contracts, is unconstitutional and void.

To the giving of which fifteenth instruction said judge did
375 then and there refuse, overrule and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Sixteenth. In the case of Henry Corwith *vs.* The State Bank of Illinois, the Circuit Court of La Fayette county had no jurisdiction of the defendant, and the judgment and subsequent proceedings against said defendant were void; and the sheriff's sale and deed passed no title to the grantee.

To the giving of which sixteenth instruction said judge did then and there refuse, overrule and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Seventeenth. No such corporation as the State Bank of Illinois having existed, or if so, the judgment and proceedings against said corporation would in no wise affect the property or rights of the corporation created in 1835, by the Illinois legislature, known as the president, directors and company of the State Bank of Illinois.

To the giving of which seventeenth instruction said judge did then and there refuse, overrule and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Eighteenth. Under the charter and laws of Illinois applying to the incorporation known as the president, directors, and company of the State Bank of Illinois, such incorporation had no authority, under the laws of Wisconsin in force in the year 1842, to acquire or hold real estate in Wisconsin, and such incorporation had no such
376 interest or title in the premises in controversy, then or subsequently, as to enable it, or any person claiming through or under it, to defeat the right of possession in James Campbell, trustee, or in the plaintiff, his grantee.

To the giving of which eighteenth instruction said judge did then and there refuse, overrule and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Nineteenth. The laws of Wisconsin, in force since 1850, gave to the purchaser at a sheriff's sale a right of action against the party for whose benefit the real estate

R. S. 1849; page 548; §107.

was sold for the purchase money and interest, in case such purchaser should be evicted from the possession of such real estate in consequence of the judgment upon which execution issued being vacated or reversed; now, in this case, if the jury believe, from the evidence, that the judgment upon which the execution issued, and the premises have been sold had been reversed anterior to the sheriff's deed offered by the defendant in evidence, then the def't, Scales, has his remedy for the purchase money and interest against Corwith, the plaintiff in such execution; and you must find for the plaintiff.

To the giving of which nineteenth instruction said judge did then and there refuse, overrule and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Twentieth. If the jury believe, from the evidence, that the judgment in the Corwith case was reversed, the plaintiff non-suited, his writ quashed, and the def't, the State Bank of Illinois, dis-
377 charged, then no sheriff's deed issued subsequent to such proceedings, and based on such judgment, can operate as a defence to the plaintiff McGoon's right of recovery in this action.

To the giving of which twentieth instruction said judge did then and there refuse, overrule and deny; to which refusal and decision said plaintiff's counsel did then and there object.

Twenty-first. If the jury believe, from the evidence, that the plaintiff had the right of possession, at the commencement of this action, then you will find for the plaintiff.

To the giving of which twenty-first instruction said judge did then and there allow.

Twenty-second. If the jury find, from the evidence, that the execution upon which the premises were sold by the sheriff, upon the Corwith judgment, had no clerk's seal thereon when issued, and not until after such sale had been made, then such sale was irregular, and the sheriff's deed granted thereon is not admissible as evidence in this cause.

To the giving of which twenty-second instruction said judge did then and there refuse and deny, and did then decide that "the State Supreme Court having reversed the order of the State Circuit Court, setting aside the sale, this court is not to sit in review of the decision of said Supreme Court, and this point is answered in the negative." To which refusal and decision, and every part thereof, said plaintiff's counsel did then and there except.

378 Twenty-third. If the jury believe, from the evidence, that at the time of the commencement of the suit of Cor-
2 Wallace 313; 16 Mass. 190; 8 Peters 281; 3 Story 657. with *vs.* State Bank of Illinois the def't therein had ceased to exist as a corporation, then the judgment subsequently obtained against it in such suit was a nullity, and formed no valid basis for the sheriff's deed offered in evidence in this cause.

To the giving of which twenty-third instruction said judge did then and there refuse and deny, and did then decide that "the Supreme Court of the State having confirmed the sheriff's sale, this court answers this point in the negative." To which refusal and

decision, and every part thereof, said plaintiff's counsel did then and there except.

Twenty-fourth. The trust created by the deed of trust of H. H. Gear and wife to James Campbell, trustee, made Nov. 2, 1842, was such an express trust as the estate of the trustee, in the granted premises, and his right of possession were not divested by the Corwith judgment, proceedings, and sheriff's deed offered in evidence by the def't in this cause.

To the giving of which twenty-fourth instruction said judge did then and there refuse, overrule and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Twenty-fifth. The tax deed to La Fayette county, executed Dec. 29, 1852, recorded Dec. 30, 1852, in said county, and the subsequent order of the board of supervisors of said county, and the deed from said La Fayette county to the plaintiff of the premises, are evidence for the plaintiff that entitle him to your verdict.

379 To the giving of which twenty-fifth instruction said judge did then and there refuse and deny, and did then decide that "if the title was at the time of the levy of said tax in the United States, the land was not subject to tax, and the deed vests no title in the grantee." To which refusal and decision, and every part thereof, said plaintiff's counsel did then and there except.

Twenty-sixth. Statute-title, such as relied on by the def't in this cause, as a general rule of law, is not construed liberally, nor does such title take much by implication; and the insufficiency and irregularity of some of the proceedings in obtaining such title by the def't are of such character that you will find for the plaintiff.

To the giving of which twenty-sixth instruction said judge did then and there refuse, overrule, and deny; to which refusal and decision said plaintiff's counsel did then and there object.

Twenty-seventh. If the jury believe from the evidence that no judgment was signed and filed in the case of Corwith *vs.* State Bank of Illinois, then the sheriff's sale upon the execution issued in said cause was not authorized, and you will find for the plaintiff.

R. S. 1849, p. 536, S. 14 & 15.

To the giving of which twenty-seventh instruction said judge did then and there refuse, overrule, and deny; to which refusal and decision said plaintiff's counsel did then and there accept.

Twenty-eighth. There being no evidence that the judgment in the case of Corwith *vs.* State Bank of Illinois, was docketed as required by law, such judgment and the 380 proceedings thereunto have not operated to defeat the plaintiff's right to recover in this action.

R. S., 1849, p. 536, S. 15 & 16.

To the giving of which twenty-eighth instruction said judge did then and there refuse, overrule, and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Twenty-ninth. There being no record or evidence introduced by the def't showing that either a copy of the writ of attachment in the Corwith suit or of the sheriff's certificate of sale was filed in the office of register of deeds of La Fayette county, as required by law, the plaintiff, McGoon, a purchaser, is entitled to recover.

To the giving of which twenty-ninth instruction said judge did then and there refuse, overrule, and deny; to which refusal and decision said plaintiff's counsel did then and there except.

Thirtieth. There is no sufficient proof in this cause of the assignment by Earnest to Scales of the sheriff's certificate of sale, so as to authorize the sheriff to execute a deed to such assignee.

To the giving of which thirtieth instruction said judge did then and there refuse, overrule, and deny; to which refusal and decision said plaintiff's counsel did then and there accept.

And because the said several matters, so produced and given in evidence on the part of said plaintiff, and by said plaintiff's counsel, insisted upon as entitling said plaintiff to a verdict; and be-
381 cause the said several exceptions so offered and made to the opinion and decision of said judge as aforesaid do not appear upon the record of the said trial, therefore, on the prayer of said plaintiff, the said judge hath to this bill of exceptions put his seal pursuant to the law and statute in such case made and provided, this 2nd day of June, A. D. one thousand eight hundred and sixty-eight, at the city of Milwaukee, in the district of Wisconsin, aforesaid.

[SEAL.] A. G. MILLER.

And same day, (June 2, 1868,) came the plaintiff and filed his bond, with Henry S. Magoon as surety, in the penalty of five hundred dollars "conditioned to prosecute a writ of error to effect, and answer all costs if he shall fail to make good his plea, which bond is as follows:

Circuit Court of the United States for the District of Wisconsin.

Bond for costs on writ of error.

RICHARD H. McGOON
vs.
SAMUEL H. SCALES.

Know all men by these presents, that we, Richard H. McGoon, of Scales Mound, Jo Daviess county, Illinois, and Henry S. Magoon, of Darlington, in the county of La Fayette, and State of Wisconsin, are held and firmly bound unto the above-named Samuel H. Scales, his heirs, executors, administrators, or assigns, in the sum of five hundred dollars to be paid to the said Samuel H. Scales, his heirs, executors, administrator, or assigns, to which payment, well and truly to be made, we bind ourselves and such of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this second day of June, A. D. 1868.

Whereas the above-named Richard H. McGoon has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the Circuit Court of the United States for the district of Wisconsin:

382 Now, therefore, the condition of this obligation is such that if the above-named Richard H. McGoon shall prosecute his said writ of error to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

R. H. McGOON,
HENRY S. MAGOON.

Sealed and delivered in presence of—
EDWARD KURTZ.

DISTRICT OF WISCONSIN, *ss*:

Richard H. McGoon and Henry S. Magoon, being duly sworn, doth say, each for himself, that he is worth the sum of one thousand dollars in property in said district liable to execution, and over and above all debts and exemptions.

R. H. McGOON.
HENRY S. MAGOON.

Sworn and subscribed to before me, this 2d day of June, A. D. 1868.
EDWARD KURTZ, *Clerk*.

Approval.

June 2, 1868. Approved: A. G. MILLER, *Judge*,

Whereupon a writ of error and citation issued and a copy of writ of error lodged for defendant in error.

383 UNITED STATES OF AMERICA, *District of Wisconsin, ss*:

I, Edward Kurtz, clerk of the Circuit Court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a full and complete exemplification of the record and proceedings in the suit of Richard H. McGoon *vs.* Samuel H. Scales.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district of Wisconsin, this fifteenth day of August, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the ninety-third.

[L. S.] EDWARD KURTZ, *Clerk*.

384 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the judges of the Circuit Court of the United States of America for the district of Wisconsin, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said Circuit Court of the United

States of America, for the district of Wisconsin, before you, between Richard H. McGoon, plaintiff, and Samuel H. Scales, defendant, a manifest error hath happened to the great damage of the said Richard H. McGoon, as by the complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, that of right and according to law and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this second day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

[SEAL.] EDWARD KURTZ, *Clerk.*

385 The United States of America, to Samuel H. Scales, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States of America for the district of Wisconsin, wherein Richard H. McGoon is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this second day of June, in the year of our Lord one thousand eight hundred and sixty-eight and of our independence the 92nd.

[SEAL.] A. G. MILLER,
Dist. Judge.

I accept service of above citation this 27th day of August, A. D. 1868. J. H. KNOWLTON,
Att'y for Samuel H. Scales, Defendant in Error.

Supreme Court United States.

DEC. T, 1868, No. 184.

RICHARD H. MAGOON,
PLAINTIFF IN ERROR,
vs.
SAMUEL H. SCALES.

Error to Circuit Court of United States for the District of Wisconsin.

The following chronological arrangement of the several conveyances, will aid the Court in arriving speedily at the precise question upon which this case depends:

AUGUST 4, 1835. The W. half of this qr. section was entered by Peter Perry, and by him, same day assigned to John Atchison.

AUGUST 4, 1835. The E. half same section was entered by Richard Thomas, who the same day assigned to J. Atchison.

JANUARY 12, 1836. Atchison conveyed to H. H. Gear by warrantee deed.

NOVEMBER 3, 1838. Gear and wife mortgaged the land to the State Bank of Illinois to secure $135,000. This mortgage contained covenant of warranty.

NOVEMBER 2, 1842. Gear and wife conveyed to James Campbell as trustee of the Bank. R. 12, 13.

OCTOBER 31, 1848. The Bank conveyed to Manly, Calhoun and Ridgely to close up the affairs of the Bank. R. 15, 16, 17.

NOVEMBER 3, 1851. The former entries of this quarter section having been vacated, at the Land Office, (Record 63, 64,) Gear purchased the land at Mineral Point. R. 66, 67.

SEPTEMBER 1, 1852. Patent issued from the United States to Gear on his purchase of November 3, 1851.

AUGUST 13, 1853. Corwith commenced suit against the Bank, by attachment, and attached these lands, obtained judgment, issued execution, and this land was sold to James H. Earnest, July 23, 1855; and after various proceedings in the Circuit Court, and on appeal in the Supreme Court of the State of Wisconsin the sale to Earnest was sustained, and, on the 17th of March, 1868, the Sheriff conveyed the land in suit to the defendant scales. R. 179.

This is the title of the defendant below and the defendant in error; and its validity, of course, depends upon the record of proceedings in the suit of Corwith against the State Bank. If those proceedings are valid, then the title of the defendant scales; through Earnest the judgment purchaser, relates back to the date of the attachment of the land; which was August 13, 1858.

NOVEMBER 19, 1862. Subsequent to the attachment of the land by Corwith, Manly, Ridgely and Campbell, trustees appointed by an act of the Legislature, approved March 1, 1847, and assignees of the Bank by the deed of the Bank, dated October 31, 1848, *pretended* to convey to the Plaintiff, Magoon.

JULY 12, 1865. James Campbell, trustee, under the deed from Gear to Campbell, dated Nov. 2, 1842, conveyed to Magoon.

JULY 12, 1865. James Campbell individually conveyed to Magoon.

JUNE 17, 1867 After the commencement of this action of ejectment H. H. Gear conveyed to the Plaintiff, Magoon.

PLAINTIFF'S TAX TITLE.

DECEMBER 29, 1852. Tax deed to La Fayette County.
Tax sale April 14, 1849. At this time the land was owned by United States and of course not subject to taxation.

NOVEMBER 21, 1860. Resolution of County Board Supervisors of La Fayette County, directing conveyance to Magoon.

DECEMBER 31, 1863. Deed from Clerk of the Board to Magoon.

Supreme Court of the United States.

OCTOBER TERM, 1869.—No. 284.

RICHARD H. MAGOON, Plaintiff in Error,

vs.

SAMUEL H. SCALES, Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

BRIEF FOR RICHARD H. MAGOON, the Plaintiff in Error.

By WILLIAM P. LYNDE,
MONTGOMERY M. COTHREN,
HENRY S. MAGOON,
Attorneys for Plaintiff in Error.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

In the Supreme Court of the United States.

OCTOBER TERM, 1869.

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vs.
SAMUEL H. SCALES, Defendant in Error.
No. 284.

BRIEF FOR RICHARD H. MAGOON, THE PLAINTIFF IN ERROR.

The Facts.

This was an action of ejectment, brought by plaintiff, Magoon, against defendant, Scales, to recover the possession of the southeast quarter of section 32, in township one (1) north, of range two, (2,) east of the fourth principal meridian, one hundred and sixty acres in La Fayette county, Wisconsin. The tract adjoins the Illinois state line on the south. It has produced vast quantities of lead ore, and it still, as mineral ground, is exceedingly valuable. The value ($2,500) mentioned in the declaration is merely nominal. This action is a test, because other neighboring tracts, embracing many hundred acres of mineral land, rest on titles similar to this; hence, the decision by this court of the questions involved is unusually important, not only to these parties, but to many others. Indeed some of the points, a decision upon which is now for the first time evoked from this learned court, relating to trusts, are of national interest, and of an importance far beyond the limits of this case and of the year wherein

this court shall finally set them at rest. We ask, therefore, this Honorable Court's most attentive care.

This action was begun in the United States circuit court in Wisconsin, December 8, 1865. The declaration is in ejectment in proper form. (See Printed Trans., p. 1.) To this declaration the defendant's only plea is the *general issue*, which plea was filed January 22, 1866. (See Trans., pp. 3, 4.) This is the only plea that the defendant ever made or filed in this cause.

On the issue so made, the first trial before said circuit court, in the city of Milwaukee, Wisconsin, Judge Andrew G. Miller, the district judge, alone presiding at the trial, at April term, 1866, resulted in a verdict for the defendant, Scales. (Trans., p. 4.) The second trial, at September term, 1867, in the same city, his honor Justice David Davis, together with said district judge, presiding, resulted virtually in favor of the plaintiff, Magoon. (Trans., 5, 6.)

The third trial, being the last, took place before said circuit court, at Milwaukee, the district judge, Hon. Andrew G. Miller, alone presiding at the trial, at the April term, 1868, and resulted in favor of the defendant, Scales, under the rulings and instructions of said judge, which rulings and instructions we profoundly believe to be erroneous and supported by neither the law nor the facts. To correct those errors of this last trial and of the judge below,—errors at once both great and grievous to the plaintiff; errors whose magnitude casts deep shadow on those other titles of which this action is a test,—this cause is now brought upon writ of error to this court. Mr. Magoon, the plaintiff, born on the banks of the Hudson; his ancestors of those who fought and fell in the Revolution; himself one of Wisconsin's earliest pioneers, and who there has maintained, for more than forty years, a character for integrity and for business honor second to none; his own age already advanced beyond threescore and ten, has grown indeed too old, if now his hard-earned property is be swept away forever by those rulings and that judgment, which not only cannot bear the test of truth or principle, but, as we believe, do manifestly mock plainest

justice as well as all the facts proved and established on the trial.

Upon this last trial, a jury having been called and sworn, the plaintiff, Magoon, established, before the court and jury, his right and title to the premises in question, by the following proofs:

First Title.

1. A patent from the United States, granting the southeast quarter of section thirty-two, in township one north, of range two east, containing one hundred and sixty acres, being the premises in question, to Hezekiah H. Gear, dated September 1, 1852. (See printed Trans., pp. 9, 10.)

2. A deed from the aforementioned patentee, Hezekiah H. Gear, and his wife, to the plaintiff, Richard H. Magoon, conveying said premises with other tracts, dated June 16, 1865. (Trans., 10, 11.)

The foregoing patent and deed of themselves showed a clear and perfect record title to the premises in question to be in the plaintiff in this cause, Richard H. Magoon.

Here we premise that, at a subsequent stage of the trial, defendant, Scales, attempted to show, by certain documents, which plaintiff's counsel insisted were inadmissible as testimony, that the tract in controversy was first entered from the United States, August 4, 1835, by Peter Perry and Richard Thomas; that the land-office certificates of said purchase were, on the same day, assigned to John Atchison; that said John Atchison, January 12, 1836, conveyed said premises to Hezekiah H. Gear; that this first entry was subsequently cancelled and revoked by the United States, May 25, 1847; and that afterwards, November 3, 1851, said Gear made a new entry of the land from the United States, and obtained a patent therefor September 1, 1852. (Trans., 61 to 70.)

Therefore, the plaintiff, at the trial, before resting his cause, did, in addition to his FIRST TITLE above stated, establish a further and SECOND TITLE to the premises, by the following proofs:

Second Title.

3. A TRUST DEED from Hezekiah H. Gear to James Campbell, trustee, dated November 2, 1842, conveying the premises and other tracts "to said James Campbell and *his heirs*," upon the following declaration of trust: "*Upon the trust and confidence that the said lands* SHALL *be* SOLD *by* HIM and his heirs, executors, or administrators, for such sum or sums as shall be directed by the president, directors, and company of the State Bank of Illinois; and the *proceeds* of any SUCH SALE are to be applied, *after deducting all necessary costs and expenses*, to the sole use and benefit of said president, directors, and company, or *their assigns*; and if said lands are not SOLD by *said trustee as aforesaid*, then the said Campbell, his heirs or executors, to stand seized of the premises for the use of the said president, directors, and company of the State Bank of Illinois, and *their successors in office and assigns.*" In this trust deed, said James Campbell is named as the party of the second part, and the conveyance is absolute to him, "*and his heirs and assigns*" till we come to the end of the *habendum* clause; and "*all leases*" on the land *are to the use and benefit of said second party*," that is, of James Campbell, the trustee; and although all the *leases*, *buildings*, *improvements*, and *appurtenances* are "*to his use and benefit*," yet the trust covers only the "lands and premises" solely, thereby creating in him a personal estate and interest entirely separate and apart from the trust. (Trans., 11, 12, 13, 14.)

The above trust deed established in James Campbell, the trustee, an ACTIVE TRUST. It clothed him, the trustee, with the LEGAL TITLE. And directly here the revised statutes of Wisconsin, 1849, provide: "Every express trust, valid as such in its creation, shall vest the WHOLE ESTATE IN THE TRUSTEE, in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created shall take NO ESTATE OR INTEREST IN THE LANDS, but may enforce the performance of the trust in equity." (R. S. of Wisconsin, 1849, p. 319, sec. 16.)

The whole estate, therefore, in the premises was vested by said trust deed solely in the trustee, James Campbell. But

inasmuch as the president, directors, and company of the State Bank of Illinois were the *cestui que trusts* named in said deed, and therefore entitled "their successors in office and assigns" to enforce the performance of the trust in equity. The plaintiff produced in evidence the following:

4. A deed from the president, directors, and company of the State Bank of Illinois, to Uri Manly, John Calhoun, and Nicholas H. Ridgely, trustees and assignees, dated October 31, 1848, conveying to them "all the assets and property of the said president, directors, and company of the said State Bank of Illinois, and *all the lands* and town lots of or belonging to the said bank, and *all the estate* of said bank, real, personal, or mixed, *of every kind*, nature, or description, and wherever situated, and *all the rights*, and credits, and choses in action belonging to or due to said bank, and all judgments recovered by said bank, all bonds, notes, *covenants, and agreements made to said bank, or to any other person or corporation in trust for said bank*, and every kind or description of property or money in possession or in action belonging or due to said bank, or in or to which *said bank has any right, claim, or interest*, and all stocks of any kind held or claimed by or for said bank." (Trans., 14, 15, 16, 17.)

The above deed is properly signed by the president of the bank, as authorized and provided for by section 33 of the act incorporating said bank, passed by Illinois Legislature, February 12, 1835. (See Trans., 35.)

After the execution of the foregoing deed, John Calhoun, one of the trustees therein named, resigned, and James Campbell was duly appointed in his place. Calhoun died in 1861. (Trans., 56.)

5. A deed from the foregoing trustees and assignees of the president, directors, and company of the State Bank of Illinois, Uri Manly, Nicholas H. Ridgely, and James Campbell, conveying the premises in question, and other tracts, to the plaintiff, Richard H. Magoon, dated November 19, 1862. (Trans., 17, 18, 19.)

After the date of the foregoing deed, Uri Manly, one of

the trustees and assignees therein named, died in 1864. (Trans., 56.)

Accordingly, the plaintiff produced in evidence, from the surviving trustees and assignees,

6. Another deed from said surviving trustees and assignees, Nicholas H. Ridgely and James Campbell, conveying the premises in question and other tracts to the plaintiff, Richard H. Magoon, dated July 12, 1865. (Trans., 20, 21.)

The above SECOND TITLE showed, that whatever interest, title, equity, or right to enforce the performance of the trust, the president, directors, and company of the State Bank of Illinois had acquired to the premises as *cestui que trusts*, by virtue of Hezekiah H. Gear's trust deed to James Campbell, dated November 2, 1842, had been conveyed to, and at the commencement of this action was in, the plaintiff, Richard H. Magoon.

Added to the foregoing FIRST TITLE and the foregoing SECOND TITLE, the plaintiff at the trial, before resting his cause, established his THIRD TITLE to the premises in question, by the following proofs:

Third Title.

7. A deed from James Campbell, the trustee appointed in Hezekiah H. Gear's aforementioned trust-deed of November 2, 1842, to the plaintiff, Richard H. Magoon, conveying the premises in question and other tracts, dated July 12, 1865, with covenants that said deed was made by said Campbell to plaintiff, Magoon, with full authority of the several *cestui que trusts* named in said trust-deed, and in full virtue of the power granted, vested, and conferred by said trust-deed in said James Campbell, the trustee. (Trans., 21, 22, 23.)

8. A deed from said James Campbell, individually, to the plaintiff, Richard H. Magoon, conveying the premises and other tracts, dated July 12, 1865. (Trans., 23, 24.)

Inasmuch as the aforementioned trust-deed of Hezekiah H. Gear, dated November 2, 1842, established in James Camp-

bell *an active trust*, and clothed him with the *legal estate*, the above deed from said Campbell, the trustee, to the plaintiff, and the last above mentioned deed from said Campbell individually to the plaintiff, vested clearly in said plaintiff, Richard H. Magoon, the legal title and "THE WHOLE ESTATE" to the premises in question.

But in addition to the foregoing First, and Second, and Third Title to the premises, the plaintiff, at the trial, before resting his cause, established a FOURTH TITLE to the same, by the following proofs:

9. A tax-deed from the clerk of the board of supervisors of La Fayette county, Wisconsin, conveying the premises in question to said county of La Fayette, dated December 29, 1852, recorded in said county December 30, 1852.

The above tax-deed was made and executed in accordance with the following provisions of Wisconsin statutes:

"If any land sold for taxes shall not be redeemed, the clerk of the board of supervisors of the county where the same was sold shall, after the expiration of the time prescribed by law for the redemption thereof, execute in the name of his county, as clerk of the board of supervisors thereof, under his hand and seal, to the purchaser, *a deed* of the land so remaining unredeemed, and shall acknowledge the same, which shall vest in the grantee *an* ABSOLUTE ESTATE IN FEE SIMPLE *in such land;* and such deed, duly witnessed and acknowledged, shall be *prima facie* evidence of the regularity of all the proceedings, from the valuation of the land by the assessor inclusive up to the execution of the deed, and may be recorded with the like effect as other conveyances of land." (R. S. of Wisconsin, 1849, p. 162, sec. 109.)

Which statute was amended by the Wisconsin legislature, April 19, 1852, as follows:

"SECTION 1. When any deed of land, hereafter executed by any officers authorized by the laws of this State to execute deeds of land sold for the non-payment of taxes, shall contain a recital that the lands therein specified as conveyed have been sold, and said deed executed on account of the non-payment of any tax, such *deeds shall be* CONCLUSIVE *in all courts that the proceedings have been regular*, from the valuation of the land up to the execution of the deed, and of the existence of

all conditions precedent, in any way affecting the validity of said deed, except as follows, to wit:

"SEC. 2. Said deeds shall be *prima facie* evidence only, first, of the liability of said lands to taxation; second of the non-payment of the tax for which the same were sold; third, of the non-redemption of said land after sale of said lands and before the recording of the tax deeds.

"SEC. 3. In case of lands sold for the non-payment of taxes previous to the passage of this act, and the deed thereof executed subsequent to said passage, it shall be in the power of the original patentee or his assignee to redeem said land within one year after recording of said tax deed.

"SEC. 4. If the land is not redeemed in the class of cases mentioned in the preceding section, in one year after the recording of the deeds, said deed shall have all the effect given under sections 1 and 2 of this act." (Wisconsin Laws, 1852, p. 783.)

Taxes having been assessed on the premises in 1847, the same having remained unpaid, the land having been sold for such unpaid taxes to La Fayette county as purchaser, no one having redeemed such tract from said tax sale, the foregoing tax deed was thereupon executed to the purchaser, said La Fayette county, pursuant to the above statutes, from which tax deed, recorded December 30, 1852, no one ever redeemed. Whereby "an absolute estate in fee simple in such land" appeared to be vested in the grantee, said La Fayette county.

Thereupon the plaintiff produced in evidence,

10. Resolutions of the county board of supervisors of La Fayette county, Wisconsin, authorizing the clerk of their board to sell and convey said land, for and in behalf of said county, to the plaintiff, dated November 21, 1860. (Trans., 26.)

Said resolutions were in conformity to the following statute:

"The board of surpervisors of any county may, by an order to be entered in their records, authorize the clerk of their board to sell and convey, by deed, duly executed and delivered by said clerk, under his official signature, and sealed with the seal of said board of supervisors for such county, any lands conveyed to such county for the non-payment of taxes." (Wisconsin Revised Statutes, 1858, p. 229, sec. 134; Session Laws 1859, ch. 22, secs. 12, 51.)

The plaintiff next produced in evidence—

11. A deed from La Fayette county, Wisconsin, by John Collins, clerk of the board of supervisors of said county, to the plaintiff, Richard H. Magoon, conveying said premises, dated December 31, 1863, recorded January 3, 1865. (Trans., 26, 27, 28.)

The foregoing deeds show that whatever title had grown up on the land for non-payment of taxes, had been regularly conveyed to and was vested in the plaintiff, Richard H. Magoon.

Further, in addition to the above-stated first, second, third, and fourth title, the plaintiff at the trial, before resting his cause, showed by the admissions of the defendant, that the defendant at the commencement of the suit was in possession, and that the premises were of $2,500 value. (Trans., 28.)

Further, the plaintiff at the trial, before resting his cause, produced and gave in evidence the several acts of the Legislature of the State of Illinois, incorporating, amending, and repealing the charter of the corporation known as the President, Directors and Company of the State Bank of Illinois, as follows:

First. The act of incorporation, February 12, 1835.

The 3d section of this act charters the bank, "by the NAME OF THE PRESIDENT, DIRECTORS AND COMPANY OF THE STATE OF ILLINOIS;" and provides that "by THAT NAME it SHALL BE competent to contract and be contracted with, sue and BE SUED, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts and places."

Said corporation to have a seal, and to establish by-laws, sec. 7; the affairs of said corporation to be conducted by nine directors, sec. 11; one of the directors to be elected president, sec. 16; the non-payment of the bank's evidences of debt to forfeit the charter, sec. 25; and all conveyances of real estate to be made and signed by the president, sec. 33. (Transcript, 28 to 35.)

The 5th section of said act provides that in four cases alone it shall be lawful for said bank to purchase, hold, and

convey real estate; and that the bank, in no other case and for no other purpose, shall purchase, hold, or convey real estate; neither of which four cases apply to or include the form of the trust deed of Hezekiah H. Gear to James Campbell, above given, dated November 2, 1842.

Second. An act in relation to bank collectors. (Trans., 35.)

Third. An act for the benefit of bank debtors. (Trans., 36.)

Fourth. An act to suspend certain laws in relation to banks. (Trans., 36, 37, 38.)

Fifth. An act to authorize the Governor to appoint bank directors. (Trans., 38, 39.)

Sixth. An act reviving the charter of the State Bank of Illinois. (Trans., 39–41.)

Seventh. An act to provide for payment of debts due from the State to banks. (Trans., 41, 42.)

Eighth. An act respecting the Chicago Branch Bank. (Trans., 42.)

Ninth. An act reviving the charter of the bank, and setting aside any previous forfeiture. (Trans., 42–44.)

Tenth. An act authorizing debts due bank to be paid in bills of the same (Trans., 44.)

Eleventh. An act to put the State Bank into liquidation, passed January 24, 1843.

By section 2 of this act, the bank was required to go into immediate liquidation; by section 3, to wind up its affairs, sell its real and personal estate, and to sue and be sued, for which purpose, and for no others whatever, the charter was continued for four years from March 4, 1843, and no longer; section 9 required the real estate to be sold at auction, within six months after passage of the act. This act further provided for certificates of indebtedness to be issued to the creditors of the bank; that the creditors should surrender their demands on receiving such certificates; that each creditor should be paid *pro rata*, and NO CREDITOR SHOULD BE PAID MORE THAN HIS JUST PROPORTION; and that such certificates

should be received in payment of any debts due the bank, and also in payment for any real or personal estate purchased of the bank. (Trans., 45–50.)

Twelfth. An act repealing previous acts making the bank's notes receivable for public dues. (Trans., 50.)

Thirteenth. An act repealing former act requiring the bank commissioner to be paid by State. (Trans., 51.)

Fourteenth. A supplemental act, putting the Bank of Illinois into liquidation, passed February 28, 1845.

This bank ("The Bank of Illinois") was located at Shawneetown, whereas the State Bank was located at Springfield. The Bank of Illinois was entirely different from the State Bank; but the plaintiff gave this act in evidence, because its provisions are referred to in the following act respecting the State Bank. (Trans., 51–54.)

Fifteenth. An act for finally closing the affairs of the State Bank, passed March 1, 1847.

By section 1 of this act, the President, Directors, and Company of the State Bank of Illinois were allowed the use of the charter until November 1, 1848, for the purpose of winding up the bank's affairs; the use of said charter being subject to all the conditions, restrictions, and limitations contained in section 3 of the act of January 24, 1843, putting the bank into immediate liquidation. (See "eleventh" subdivision above.)

Section 2 provided, that if said bank's affairs be not closed before November 1, 1848, the Governor was required to appoint THREE TRUSTEES to wind up its affairs. (Trans., p. 55.)

The above act, together with act of January 24, 1843, entirely repealed the charter of the bank, and its corporate existence ceased for all purposes November 1, 1848.

Turney *vs.* Wilton, 36 Ill., 391.

Sixteenth. An act authorizing the trustees of the State Bank to maintain suits at law, passed February 10, 1849.

By section 1, the trustees appointed by the Governor were authorized, in their own names as trustees, to prosecute and maintain all suits which the President, Directors and Company

of the State Bank of Illinois might have prosecuted, *if their charter had continued to exist.* Section 2 provided that all suits and actions, which were depending in courts *when the charter of the bank had expired*, might be revived by said trustees, and prosecuted in their names. (Trans., p. 56.)

The foregoing are all the acts passed by the Illinois Legislature respecting the corporation named, "The President, Directors, and Company of the State Bank of Illinois," and are fully included in the printed transcript, from page 28 to 56.

Defendant admitted at the trial that each of said several acts of the Illinois Legislature had been duly accepted by the bank in all respects. (Trans., p. 56.)

Further, the plaintiff proved, and defendant admitted, that the Governor of Illinois, pursuant to the act of March 1, 1847, for finally closing the affairs of the bank, appointed Nicholas H. Ridgely, Uri Manly, and John Calhoun, the three trustees; that they accepted said trust; that John Calhoun one of said trustees, resigned March 21, 1859; that James Camp. bell was duly appointed instead, March 31, 1859; that then he accepted, and acted as such trustee; that Uri Manly, one of said trustees, died in 1864, leaving Ridgely and Campbell sole surviving trustees. Calhoun died 1861. (Trans., pp. 56 to 60.

Further, the plaintiff showed that on March 14, 1868, he duly filed in the register of deeds' office, of La Fayette county, Wisconsin, at Darlington, notice of the pendency of the action, pursuant to the Wisconsin Revised Statutes, 1858, page 718, sec. 7. (Trans., 60–61.)

Thereupon the plaintiff, before the court and jury, rested his cause. (Trans., 61.)

Defendant's Case.

Against the foregoing proofs and the foregoing titles of the plaintiff, all the evidence introduced by defendant, Samuel H. Scales, was the following:

1. Certain papers, as an exemplification from the United

States General Land Office, intended to show that the premises in question were entered from the United States, August 4, 1835, by Peter Perry and Richard Thomas; that on the same day the certificates of said entry were assigned to John Atchison; that afterwards, on May 25, 1847, such entry was revoked and cancelled by the United States; and that on November 3, 1851, the land was re-sold, and Hezekiah H. Gear became the purchaser. (Trans., 61 to 67.)

To the reading of which exemplification, containing those loose papers and scribbles, the plaintiff's counsel objected, because—

1st. It is not competent evidence to contradict the patent.

2d. It is no proper record or proof that the original entries, made August 4, 1835, were ever set aside or cancelled.

3d. It is informal, insufficient, and not pertinent to the issue.

4th. It contains no decision adverse to the original entry by any officer or board authorized to cancel the same.

Which objections the judge severally overruled, and decided the same should be read in evidence; to which overruling and decision plaintiff excepted. (Trans., 67.)

2. Said defendant next offered in evidence a certain copy of a record in the United States General Land Office, dated November 3, *without any year stated*, purporting to show that Hezekiah H. Gear had purchased the premises in question.

The plaintiff's objections to the same were severally overruled by the judge. Exception taken. (Trans., 67, 68.)

3. Said defendant next offered in evidence a deed from John Atchison to Hezekiah H. Gear, conveying the premises in question and other tracts, dated January 12, 1836. (Trans., 68, 69.)

The plaintiff's several objections to the foregoing deed were respectively overruled by the judge. Exception taken. (Trans., 69, 70.)

4. Defendant next produced in evidence a certain mortgage from Hezekiah H. Gear to the President, Directors, and Company of the State Bank of Illinois, on the premises in ques-

tion, dated November 3, 1838, to secure the payment of $135,000. (Trans., 70–73.)

The plaintiff's objections to the foregoing mortgage were respectively overruled by the judge. Exception taken. (Trans., 74.)

5. Here the defendant's counsel offered in evidence a record of an attachment suit and proceedings in the State circuit court in La Fayette county, Wisconsin, between Henry Corwith, *plaintiff*, against "State Bank of Illinois," defendant, begun August 13, 1853. (Trans., 74 to 177.)

We here respectfully call the honorable court's careful attention to some of the salient points and facts of the foregoing attachment record, whereby it will appear that, under the pretext of judicial proceedings, as gross an outrage as ever disgraced the jurisprudence of any State was coolly planned and perpetrated, and that now the defendant in this cause, Samuel H. Scales, seeks to hide himself behind STUPENDOUS FRAUD.

Henry Corwith, a citizen of Illinois, speculator and banker, held certain certificates of indebtedness against the corporation known as the President, Directors, and Company of the State Bank of Illinois, which certificates had been issued under the act of Illinois Legislature of January 24, 1843, hereinbefore mentioned, under which act it was expressly provided, that each creditor of the bank should be paid *pro rata*, and *no creditor should be paid more than his just proportion*. Corwith had been paid, in pursuance of said act, sixteen and two-thirds per cent. of his whole claim, and this amount was indorsed on all his certificates August 15, 1851. (Trans., 84–87.) The other creditors of the bank were entitled, by every equity, as well as by the express provisions of said act, to payment of their certificates ratably equal to what Corwith received.

The bank corporation was dead. But years before its charter expired it had acquired, either as beneficiary or as absolute grantee, many lands in La Fayette, Grant, and Iowa counties, in the mineral region of southwestern Wisconsin,

aggregating fully eight thousand acres, and now of more than $1,000,000 value. The title of these lands had passed, by deeds duly executed, and long since of record, to assignees and trustees; and these lands were trust estates, out of the proceeds of which all the creditors of the formerly-existing bank were to be paid equally, in due *pro rata* proportion.

The tract, however, in controversy in this action had never been held or owned by the bank; the title and whole estate to it was by solemn deed, which no legislative act could constitutionally divest or impair, vested in James Campbell alone, by virtue of H. H. Gear's trust deed hereinbefore set forth; so, if the bank as a corporation had still existed, such title would by no means have belonged to the bank, but the legal title and the whole estate thereto were anchored solely and exclusively, in law, in equity, and in fact, in James Campbell ALONE. He alone stood before the world as the sole legal owner and holder. The trustees and assignees of the bank, acting in behalf of its stockholders and creditors, had simply the right in an equity court to enforce his performance of the trust, NOTHING MORE.

But Corwith coveted "the lion's share." Accordingly, aided in his plans by an eminent Wisconsin lawyer, Corwith concocted the mammoth design of seizing all those Wisconsin lands for his own benefit, and by "one fell swoop" to pocket their values! So, in fraud of his co-creditors of the bank, who all were entitled equally with him to the proceeds of those Wisconsin lands whenever its assignees should sell them; in violation of that law which prohibited him to be paid more than his due *pro rata* proportion; against those deeds and titles whereby the assignees held "THE WHOLE ESTATE," charged with a trust that should give every man his right; against all faith and principle; against the provisions of both the State and the National Constitution, whereby the validity of contracts is forever assured,—Corwith now begins his fraudulent extortion and pillage. Piloted by some Wisconsin attorney, he first manœuvres the following act through the legislature:

"AN ACT concerning a writ of attachment.

"SECTION 1. Any person or persons, body or bodies corporate, having any debt, claim, or demand, not sounding in *tort*, against any *foreign, once existing corporation, but which has ceased to exist* or act as a body corporate, from any cause whatever, such person or persons, body or bodies, may enforce satisfaction of such debt, claim, or demand, out of any moneys, credits, or of property lying or being in this State, whether real, or personal, or mixed, *in case* such moneys, credits, effects, or property, *would belong to such corporation, had the same not ceased to exist* or act as a body corporate, whether managed, controlled, or held at the disposal of a trustee or trustees, assignee or assignees, agent or agents, of or for such corporation, or the creditors thereof, in whole or in part, and whether resident within or without this State, and created, constituted, or appointed by such corporation, or pursuant to any law of the United States, of this, or any other State or country.

"SEC. 2. The owner or owners of such debt, claim, or demand as aforesaid, may institute a suit for the recovery and enforcement of satisfaction thereof, by suing out of any circuit court of this State a writ of attachment, which writ shall command the sheriff of the county in which the same issued *to attach* the moneys, credits, effects, and property, lying or being within this State, *which would belong to the corporation named therein had said corporation not ceased to exist* or act as a body corporate, however managed, controlled, or held, or so much thereof as will be sufficient to satisfy the demand of the plaintiff, and the costs and charges incident to said suit, and to summon (naming the corporation) to appear and answer the plaintiff's in a plea of trespass on the case, which shall be done by leaving a copy of said writ with any person or persons so managing, controlling, or holding the whole or any part of the property subject to said writ, if to be found in this State; any such person receiving a copy of said writ shall answer to the action for the defendant (nominally the corporation by name) in judiciary capacity.

"SEC. 3. The writs to be issued under this act shall conform, as near as may be, to the ordinary writs of attachment, except so far as is otherwise in this act provided.

"SEC. 4. From the issuing of the writ to final judgment and satisfaction all the provisions of law shall apply to suits commenced under this act, so far as the same may be consistent therewith, and no further.

"SEC. 5. This act shall be printed immediately after the passage thereof, and, when so printed, shall take effect and be in force." Approved July 12, 1853. (Wisconsin Session Laws, 1853, ch. 106.)

The above is a literal copy of the act, *verbatim et punctuatim*. Taking the broadest interpretation of the act, it authorizes satisfaction of a claim, first, *only out of such property as would have belonged to the dead corporation had it not ceased to exist;* secondly, *such property, so limited, must be held or controlled by some trustee, assignee, or agent, appointed by the corporation or pursuant to some law.* The last clause of section 2 is entirely *unintelligible*.

But it is clear, that such property as would not *necessarily belong to the dead corporation, had it not ceased to exist*, and such property as *was not held by some trustee appointed by the corporation or pursuant to some law*, was not even reachable by this act. A trustee appointed not pursuant to some law, but by a grantor other than the corporation, and such trustee holding the property in his own right, and the property so held by him never having belonged to the corporation, nor that would belong to it, whether it had ceased to exist or not, were wholly exempt from the operation of this act. The premises in controversy in this suit, conveyed, as hereinbefore shown, by Hezekiah H. Gear to James Campbell, by the trust deed of November 2, 1842, were not subject to this act, but were entirely beyond its widest interpretation, clearly because,

First. Said premises never belonged to the bank, and would not belong to the bank even though the corporation had not ceased to exist.

Second. Said premises were vested in James Campbell, a trustee, appointed not by the corporation, or pursuant to any law, but by the trust deed of Hezekiah H. Gear alone.

Third. The act itself, in so far as it sought to divest the estate of trustees and assignees in specific property, and to wipe out the whole title and interest of all creditors in such property, without notice to them or day in court, was legis-

lative usurpation—was necessarily a violation of existing contracts, and of vested constitutional rights.

But this act having been planned and passed, Corwith seizes the first moment to commence his suit under it, August 13, 1853. We call attention to the following unexampled features of the commencement and subsequent proceedings of his suit:

1. Corwith, in his own affidavit for the writ of attachment, basing the suit, deposes that "the State Bank of Illinois *was* a body corporate;" that it "once existed," but that it "has ceased to exist or act as a body corporate;" that "its property has passed into the hands of trustees;" that Nicholas H. Ridgely, Uri Manly, and John Calhoun are such trustees, and are residents of the State of Illinois. (Trans., 75, 76.)

So, knowingly, he begins an action in Wisconsin against a *dead* corporation, whose property had passed into the hands of non-resident trustees, but who were residents of the same State of Illinois with himself, and carefully excludes them from his action!

2. The writ of attachment only authorizes the sheriff to attach the property in Wisconsin, "which *would belong* to the State Bank of Illinois, a foreign once-existing corporation, *had the same not ceased to exist* or act as a body corporate." (Trans., 74.)

3. The action is against the "State Bank of Illinois," and the writ requires the officer to summon the "State Bank of Illinois;" whereas, the sole proper corporate name of the bank, whereby it "*shall sue and be sued in all courts and places*," was "The President, Directors, and Company of the State Bank of Illinois." (Trans., 29, sec. 3.)

4. The sheriff returns that he served the writ upon "John Bracken, SAID to be an agent of the said State Bank of Illinois, and residing in the county of Iowa. I could find no other person, as commanded by said writ, upon whom to serve said writ, within this State." (Trans., 76, 77.)

This was the only service of the writ and process ever made in this case on the defendant.

By virtue of this writ, the sheriff attached the west half of

the premises in controversy, and also attached about eight thousand acres of land in La Fayette, Grant, and Iowa counties, as "lands of the State Bank of Illinois." (Trans., 76 to 82.)

Here this attachment proceeding rested abortive. But Corwith, still restless for ALL, found that more legislation was required for his special benefit; so he schemes through the legislature another act, hastily passed and published March 8, but which met not the governor's approval till fifteen days afterward, March 23, 1854. By this act, section 2 required that, in actions brought against once-existing corporations, "the defendant SHALL be such corporation, *by its corporate name;*" and this act, re-enacting, embodying, and adding to most of the provisions of the act of July 12, 1853, repealed said act. (See Wisconsin Laws, 1854, chap. 39.)

So, supported by this act, he proceeds with this remarkable case.

April 7, 1854, Corwith filed his declaration and bill of particulars. (Trans., 82 to 88.)

Rule entered by Corwith's attorneys that the defendant plead to the declaration "within twenty days after *personal service* of a copy thereof and notice of this rule." (Trans., 88.)

We submit that "personal service" on a "*dead* corporation" is a new miracle in jurisprudence!

On October 19 and 20, 1854, the trustees and assignees of the bank, John Calhoun, Uri Manly, and Nicholas H. Ridgely, producing in court the deed of the bank to them, dated October 3, 1848, conveying all the bank's property, and producing the act of Illinois of March 1, 1847, move to dismiss the attachment, which motion the court overruled, and said trustees excepted. (Trans., 89 to 96.)

On the same day the twelve jurors, one of whom was the defendant himself in this action, Samuel H. Scales, render their verdict for Corwith for $16,687. (Trans., 96.)

Bill of exceptions in said cause filed in court instanter, October 20, 1854. (Trans., 98–102.)

The cause was immediately taken to the Supreme Court on writ of error, and on November 17, 1855, the *Corwith ver-*

dict and judgment WERE REVERSED IN ALL RESPECTS WHATEVER. (Trans., 127.)

The decision of the Wisconsin supreme court, reversing the judgment, is found in 6 Wis. Reps., 551–579. This decision wipes out most thoroughly the pretense that Corwith had any cause of action whatever before the court, and emphatically pronounces his proceeding "contrary to the plainest rules of morality and the soundest principles of law."

But while the action was thus pending in the supreme court, and before that decision of reversal was announced, Corwith, by his usual fraudulent sharp practice, causes execution to be issued on his judgment. Upon the identical judgment which was, as above stated, subsequently reversed and completely extirpated by the supreme court! The precipe and the executions are found in the Transcript, 102–104.

These executions were issued by the clerk, but bore *no seal!* Yet, under them, the sheriff sold all the vast tracts that had been attached, and many more. (Trans., 104–124.)

These executions, *without seal*, were the only ones by virtue of which those lands were sold by the sheriff, and by which the premises in controversy were struck off by the sheriff to James H. Earnest, July 23, 1855. (Trans., 106.)

November 17, 1855, the Corwith judgment was wholly set aside and reversed, and the remittitor of such reversal filed in the La Fayette county circuit court April 3, 1857. (Trans., 127.)

May 25, 1857. On motion, the sheriff's sale to James H. Earnest, of the real estate in question, wholly vacated, set aside, annulled, and declared to be of no effect, by the circuit court. (Trans., 148.)

April 21, 1858, judgment is entered by the circuit court that in the action of Corwith *vs.* State Bank of Illinois the plaintiff *take nothing by his writ;* that *the same be quashed;* that *the defendant go thereof without day;* that the *plaintiff pay the costs of suit*, and the *defendant do have execution therefor.* (Trans., 128.)

Thus ignominiously ended the original, fraudulent, and only case of Corwith *vs.* State Bank of Illinois. Beaten on

the merits before the supreme court, himself finally nonsuited and his writ and action quashed by the circuit court, it would seem that honesty should now have given up the battle. Not so Corwith. "The lands, the lands!" still his defrauding cry. So, encouraged by him, supplied by his money, resting on his agreement that he would indemnify them from all loss—he further agreeing that their purchase-money would be refunded, with interest, in case the sales were set aside—the purchasers had bought at the sheriff's sales. So when, on May 25, 1857, the circuit court set aside those sales, the purchasers, cheered by pecuniary arguments from Corwith, all appealed. On the appeal of James H. Earnest, affecting the premises in question, Samuel H. Scales was his bondsman. (Trans., 149.) At the sheriff's same sale, at the same place and day and hour, where Earnest bought, Scales had also purchased a tract in the identical section with the land in controversy in this action. (Trans., 106.) Scales' purchase, also, was set aside on the same day Earnest's was, May 25, 1857, (Trans., 170,) and Scales appealed to the supreme court on the same day that Earnest did. (Trans., 146 to 150, and 168 to 172.) Both Earnest and Scales knew all the facts; both rested on the same agreement and encouragement from Corwith; both "hand and glove" were fraudulently fighting the same plundering battle; both were and had been for years residents within three or four miles of the land in controversy; both lived within the same distance from Shullsburgh, where the trials and sales all took place; both were in constant communication with Corwith and with James H. Knowlton, their and his attorney and friend; both were thoroughly posted in all the facts and circumstances, had each merely "fighting interests," and knew perfectly well that all they could gain would be by sharp artifices, by fraud and cunning technicalities, against both justice and honesty, "against the plainest rules of morality and the soundest principles of law."

Here, as defendant, Scales', evidence alleges, Earnest assigned his sheriff's certificate to Scales as assignee, May 14, 1858. (Trans., 180.) It will be observed that this alleged

assignment was made by one thoroughly posted purchaser to another posted equally well. Neither were purchasers without notice or in good faith. Both had perfect notice and knowledge. Besides, this alleged assignment was after the Corwith judgment had been wholly reversed: after the sale itself had been set aside; after the Corwith suit had been quashed and the defendant discharged; and while Earnest's appeal, wherein Scales was bondsman, and while Scales' own appeal were both pending in the supreme court. The sale, too, was void, being under a void execution, having no seal. No rights or equities, therefore, were acquired by Scales by virtue of this assignment, that Earnest did not himself have. Both stood *in pari passu*.

June 25, 1858, injunction made by the circuit court prohibiting the sheriff from executing deeds on the Corwith sale. This injunction has never been reversed or set aside. (Trans., 125, 127.

May 5, 1857, the original deed of assignment from the bank to the trustees, which deed was put in evidence on the Corwith trial, withdrawn from the files. (Trans., 128, 129.)

August 11, 1858, the order of the circuit court, setting aside the sheriff's sale, reversed by the supreme court. (Trans., 172, 173.) The *remittitur* of this reversal was not filed in the circuit court till December 9, 1867. The reasons assigned for such reversal by the supreme court were purely technical, "*because the papers on which the motion to set aside the sales was founded were not served with the motion.*" The decision turned upon a simple question of practice, not upon the merits. The merits of the orders reversed were not reached or decided by the supreme court. (See Corwith v. State Bank of Illinois, 8 Wis., 376, where the decision was given.)

April 26, 1860, Corwith withdraws from the files of the court all the certificates on which his action was based. (Trans., 136.)

Inasmuch as the supreme court, in 8 Wis., 376, reversed the orders of the circuit court setting aside the sales, "because the papers on which the motion to set aside the sales

was founded were not served with the motion," a new motion was made to set aside the sales, but only those sales wherein plaintiff Corwith himself was the purchaser, and the proper papers whereon the motion was founded were served conformably to the foregoing decision. This motion being granted by the circuit court, Corwith fraudulently again engineered appeals, and again the supreme court reversed the orders setting aside the sales, on grounds again purely technical, without reaching or deciding the merits. The sole reason announced for this second reversal was "*because no leave had been obtained to renew the motion to set aside the sales on the former reversal.*" (See 11 Wis. R., 430, where the decision is given.) But afterwards a rehearing was obtained, and the supreme court overruled its decision in 11 Wis., 430, and affirmed the orders setting aside all the sales where Corwith himself was purchaser. This last decision is found, 15 Wis., 289, and the order of the circuit court thereby affirmed is in transcript 134–136.

Subsequently the circuit court set aside the sales to purchasers where sheriff deeds had not been executed, but refused to set them aside where sheriff deeds were issued. (Trans., 141–143.) Again Corwith obtained from the supreme court a decision reversing so much of said order as set aside any sales, but affirming the order so far as it refused to set sales aside. This decision is (18 Wis., 560) merely and solely to the effect that "because the executions under which the sales took place were, some three years after being issued, allowed to be amended by having the clerk's seal affixed, therefore the sheriff's sales were not absolutely void."

The Wisconsin statutes required, "ALL writs SHALL be SEALED with the SEAL of the court from which the same may issue." (Wis. Rev. Stat., 1849, 493, 760.) A seal to the writ of execution is absolutely imperative by those statutes, as it always was by common law. The decision above, that sales by execution without seal are not void, is *sui generis*. It is a grain of sand thrown against an overwhelming current of authorities.

This court, in Insurance Company *vs.* Hallock, 6 Wallace, 556, expressly decides this question. His honor Mr. Justice Miller, delivering the opinion of the court, says:

"If the paper here called an order of sale is to be treated as a writ of execution or *fieri facias* issued to the sheriff, or as a process of any kind issued from the court, which the law required to be issued under the seal of the court, there can be no question that it was void, and conferred no authority upon the officer to sell the land. The authorities are uniform that all process issuing from a court which by law authenticates such process with its seal is void if issued without a seal. * * * That the ordinary writ of *fieri facias* is the authority of the sheriff to levy on property and sell it is undoubted, and needs no reference to authorities to support it; and if the supposed writ is void, then the levy and sale are also void, and not merely voidable, because they are made without any authority on the part of the officer. * * * If his power to sell depends upon a process, and that process shows on its face that it is void, it can confer no authority, and all his proceedings under it are simply void. Without the seal it is void. This is his authority, and if it is for any reason void, his acts purporting to be done under it are also void."

The executions were all issued April 23, 1855, *without any seal.* (Trans., 104.) The sheriff's sale was on July 23, 1855. (Trans., 105.) Seal allowed to be attached April 22, 1858, three years after the executions were issued, and thirty-four months after sheriff's sale!! (Trans., 104.) This, too, after the judgment had been reversed, the plaintiff non-suited, his writ quashed, and the defendant discharged. Yet, with no case remaining in court, no judgment, no parties in court, all having gone out of court by its solemn decree, Corwith is indulged in this miraculous proceeding. Surely that of old was sublimely a miracle when Omnipotence spoke Lazarus from his four days' death. But here, an execution dead in its very inception, dead through a history of three years, aye, absolutely void, and against a dead corporation, is all at once filled with bursting, irrepressible life from its very beginning, and clothed with a potency before which all rights and titles must bow, and now be ground to dust, by a simple rule of

court!! Where, in all jurisprudence, can be found a miracle or precedent so astounding as this?

By virtue of these sales, at once both fraudulent, repulsive to honesty, and void, Corwith realized about $17,000 in money from the purchasers, and at the same time swept away all those lands at merest songs in price, so that up to this day the bank and its creditors have received not one dollar, and have not now one foot of land to show what once was theirs!

Therefore, against this record of Corwith *v.* State Bank of Illinois, containing the above monstrous frauds and anomalies, plaintiff, Magoon, urged before the court the following objections:

1. the court had no jurisdiction of the defendant in said attachment suit. (See the return.) That the attachment only authorized the seizure of such property "as would have belonged to the bank had it not ceased to exist," and only the west half of the premises in controversy was seized by the attachment. (Trans., p. 177.)

2. The service of process was on John Bracken, "*said* to be an agent of the bank." No publication; no other service. The affidavit shows that the corporation was dead; therefore no person or party could appear for the dead corporation without some proper legal authority and appointment.

3. There was no such corporation as the State Bank of Illinois; "The President, Directors, and Company of the State Bank of Illinois" being the sole corporate name whereby the said corporation existed, and might sue and be sued.

4. The record shows that, on the 17th day of November, 1855, the judgment was reversed by the supreme court, and that, on April 3, 1857, *remittitur* was filed in the La Fayette county circuit court reversing the judgment.

5. The record shows that, on April 21, 1858, the plaintiff was non-suited, the writ of attachment was quashed, and the defendant discharged.

6. The record shows that at the time of the sheriff's sale, July 23, 1855, the execution *had no seal*, as required by law, and only authorized the sheriff to seize and levy *upon the lands and property of the defendant*, "The State Bank of Illinois."

7. The record shows that the sale of the premises in controversy was set aside by the circuit court May 25, 1857, and that Scales and Earnest appealed to supreme court. Scales was bondsman for Earnest on the appeal, June 22, 1857.

8. The record shows a deed copied therein from the "President, Directors, and Company of the State Bank of Illinois," to three assignees and trustees, executed October 31, 1848, conveying all real estate from said corporation, which deed is a part of the record of the trial, A. D. 1854.

9. The record shows no judgment was signed or filed, as the law required, (Rev. Stat., p. 536, secs. 14, 15, 16;) and the judgment was not valid, nor authority for any proceeding thereon without such signing and filing. The sections of Wisconsin Revised Statutes, referred to in this objection, are as follows:

"SEC. 14. The clerk of every court of record shall mark upon the back of every record of judgment filed in his office the time of filing the same; *no judgment shall be deemed valid so as to authorize* ANY *proceeding thereon*, until the record thereof shall have been signed and filed.

"SEC. 15. No judgment shall affect any lands, tenements, real estate, or chattels real, or have any preference as against other judgment creditors, purchasers, or mortgagees, until the record thereof be filed and docketed as herein directed.

"SEC. 16. At the time of filing a record of judgment, the clerk shall enter in an alphabetical docket, in books to be provided and kept by him, a statement of such judgment, containing:

"1. The names at length of all the parties to such judgment, designating particularly those against whom it is rendered, with their places of abode, titles, trades or professions, if any such are stated in such record;

"2. The amount of the debt, damages, or other sum of money recovered, with the costs;

"3. The hour and day of entering such docket;

"4. If the judgment be against several persons, such statement shall be repeated under the name of each person against whom the judgment was recovered, in the alphabetical order of their names respectively." (Wis. R. S., p. 536, secs. 14, 15, 16.

The record does not show that the judgment was ever signed, or filed, or docketed. Never, and in no place.

Objection 10. The record shows that the judgment was reversed, and that the plaintiff in error was successful before the circuit court; therefore, the lien of the judgment ceased and the certificate of sale fell therewith. (R. S. 1849, p. 535, sec. 6.

11. The corporation being dead, a judgment against the same is a nullity.

2 Wallace, 313.
Hildreth *v.* Thompson, 16 Mass., 191.
3 Story, 657.

12. The Wisconsin act, 1853, p. 102, under which Corwith's suit was begun, was void, because unconstitutional in seeking to legislate away the property of trustees and assignees, divesting vested rights, and impairing the obligation of contracts, and all proceedings authorized thereby are void. James Campbell owned the legal title.

13. The record shows, and it is a matter of fact, that the President, Directors and Company of the State Bank of Illinois had no interest or title in the premises at the time of the trial and judgment that was subject to levy, or sale, or seizure; the property, as far as the bank was concerned, having been conveyed by deed to assignees, and so far as the legal title was concerned, it was vested in James Campbell by deed of trust, dated November 2, 1842.

14. The *remittiturs* were all filed since the former trial of this suit, and no notice has been given of any defence upon any matters arising since action brought.

15. For divers other reasons and objections, irregularities, and informalities appearing upon the face of the record.

All and several these objections the judge overruled, and plaintiff in error, Magoon, excepted. (Trans., 177–178.)

5. Defendant Scales next offered in evidence a sheriff's deed of the premises to the defendant, Samuel H. Scales, dated March 17, 1868, executed by the sheriff of La Fayette

county, Wisconsin, and based upon the foregoing attachment, suit, and judgment, in the case of Corwith *v.* State Bank of Illinois. (Trans., 179–181.)

To the introduction of said deed in evidence plaintiff Magoon urged the following objections: (Trans., 181–182.)

First. For all the reasons and objections above severally given against the judgment record of Corwith *v.* State Bank.

Second. The sale to Earnest had been set aside by the circuit court May 25, 1857, and on June 22, 1857, Corwith and Earnest, with defendant as their bondsman, appealed; the appeal was not determined till August 11, 1858, nor the *remittitur* filed in La Fayette county till December 9, 1867. But this cause was begun in 1865; said deed recites that Earnest assigned his certificate May 14, 1858, while said appeal was undetermined and the order setting aside the sale yet stood in full force.

Third. There is no proof of assignment by Earnest to Scales of the certificates, such as law requires. Such assignment must be in writing. The certificate and assignment must be shown, but have not been. Sheriff's deed no evidence of such assignment. (R. S. 1849, p. 388, sec. 6.)

Fourth. The deed recites Earnest assigned his certificate May 14, 1858, which was after the reversal of Corwith's judgment, the writ quashed, and the defendant discharged. All this was known to both Scales and Earnest at time of assignment. To Scales therefore, with full notice, was assigned a void certificate, and he acquired nothing thereby.

Fifth. Said deed was executed since beginning of this action, since issue joined; *remittitur* showing reversal by supreme court not filed till December 9, 1867. No notice, nor special plea, nor supplemental answer, nor plea *puis darrein continuance* has been filed by defendant, Scales, whereby said deed or *remittitur*, made since issue joined, could become competent testimony.

Hardy *v.* Johnson, 1 Wal., 371.

Sixth. Sheriff's deed, executed March 17, 1858, is void,

because executed after service of injunction restraining him from executing such deed.

Seventh. Because the legal title was in James Campbell, by virtue of the trust-deed of November 2, 1842, recorded November 19, 1842, conveying the premises.

Eighth. Said Campbell, so owning and holding the legal title, had never been made party to Corwith's suit; had never been divested by attachment, judgment, execution, sheriff sale, or deed, of said premises; but had conveyed same to plaintiff.

Ninth. For other errors, informalities, manifest upon said deed, and upon the proceedings whereon said deed is founded.

All and every of which objections the judge overruled, and plaintiff, Magoon, excepted. (Trans., 182.)

Here defendant, Scales, rested, and this was all the evidence given by him.

Plaintiff's Rebutting Testimony.

First. James Campbell, a witness for plaintiff, proved that the mortgage executed by H. H. Gear November 3, 1838, to the President, Directors, and Company of the State Bank of Illinois, which mortgage the defendant had offered in evidence, was fully paid and satisfied by Gear, November 2, 1842. (Trans., 182, 183.)

Second. Defendant admitted that he, Samuel H. Scales, was one of the jurors before whom the case of Corwith *v.* State Bank of Illinois was tried, in La Fayette county circuit court, A. D. 1854. (Trans., 183.)

Third. James H. Earnest, witness for plaintiff, testified, that he bid in the premises in question at sheriff sale, in case of Corwith *v.* State Bank of Illinois, in 1855; that he assigned his certificate to Scales; that he knew at and before sale that *the bank had assigned its property to trustees*, and *that the trustees denied the right of* the sheriff and of Corwith to sell; and that Corwith would indemnify any purchaser from any loss, and would save him from loss if he should lose the land!! (Trans., 183.)

Fourth. John Bracken, witness for plaintiff, testified,

that since 1838 Scales has lived three or four miles from the premises in question; that in 1853, witness as agent of the trustees of the State Bank of Illinois, had notice published in four different newspapers of the vicinity, signed by the trustees, offering all the lands formerly owned by the bank for sale; that he had handbills to the same effect freely circulated and distributed all through La Fayette county, where Scales resided; and that at time and place appointed for the sale *Scales was present;* and the trustees publicly adjourned the sale, in consequence of Corwith serving attachment; Scales was there at the time. (Trans., 183–184.)

Fifth. Plaintiff called defendant, Scales, as witness for plaintiff, and he testified that at the time of trustees' sale at Shullsburgh, testified to by Mr. Bracken, he might have been there; that he then had heard of an assignment by the bank; that HE SUPPOSED THE TRUSTEES OWNED THE LANDS; that he afterwards was a juror in Corwith's case, and heard all the papers read before the jury. (Trans., 184.)

Sixth. Plaintiff then offered deposition of Cephas Foster, of Galena, Illinois, who testified that Scales was subscriber of Galena Gazette during 1853; that the newspaper was regularly mailed to him weekly during that time. Scales resided about twelve miles from Galena; that for four weeks, beginning May 31, 1853, advertisement was inserted by the trustees of bank, in their names, offering the lands to be sold. Scales took the paper at the time. (Trans., 184–190.)

Seventh. Plaintiff then, as Gear's grantee, produced in evidence the original Gear mortgage to the bank for $135,000, on the principle that possession of note and mortgage by the maker is *prima facie* proof of payment; plaintiff called attention to the condition in said mortgage, that if the amount thereby secured be paid, then the "mortgage deed and covenant, in every part thereof, shall be utterly NULL and VOID." (Trans., 190–194.)

Eighth. Plaintiff then produced in evidence certified copy of a petition and order of injunction, restraining the sheriff from executing any deed on the Corwith execution and sales until the further order of said court, which petition and in-

junction were served on John Lutter, sheriff, who executed the deed to Scales September 28, 1867. (Trans., 194–197.)

Ninth. Plaintiff then produced John Lutter, sheriff, as witness, and offered to prove that Scales had indemnified him by bond to execute the deed; that an injunction had previously been served, prohibiting the execution of the deed, and Scales was informed of that fact; that no certificate was present or in evidence when the sheriff's deed was executed to Scales; and that the injunction had never been vacated or dissolved.

To all which defendant objected; court sustained the objection. Plaintiff Magoon excepted. (Trans., 198.)

Thereupon the plaintiff rested his cause. (Trans., 198.)

This was all the testimony submitted or offered by either party. (Trans., 198.)

Plaintiff, Richard H. Magoon, then through his counsel asked that thirty several instructions be given to the jury; all of which instructions, except the first and twenty-first, the judge severally refused and overruled; to each of which rulings and refusals the plaintiff then and there excepted. The judge in overruling the eleventh instruction, did decide and instruct the jury, "THE LAW AND FACTS ENTITLE THE DEFENDANT TO A VERDICT IN SAID CAUSE!!" (Trans., 198 to 205.) To this instruction, so given in charge to the jury, plaintiff excepted.

Upon the law given by the judge, the jury, without retiring from the box, gave the verdict pronounced by the judge for the defendant. Motion was then made to set aside the verdict and for a new trial, which was overruled, and judgment for defendant entered. To reverse this judgment wholly is the object of this writ of error.

The judgment should be reversed for, among others, the following obvious reasons:

First. By virtue of Hezekiah H. Gear's trust deed to James Campbell, dated November 2, 1842, grantee Campbell became clothed with the "WHOLE ESTATE," in law and in equity, subject only to the execution of the trust; the bank thereby took no estate or interest whatever, but merely a right to enforce the trust; and plaintiff Magoon, being grantee of

said Campbell, is vested with the whole legal and equitable title, and has the exclusive right of possession to the whole premises in controversy.

Second. The sales under Corwith's executions were void, being without seal; and the purchaser had a perfect remedy against Corwith, the execution creditor, for the purchase money *and interest*.

Third. The sheriff's deed to defendant Scales being executed more than two years *after* issue joined, made it incumbent on defendant to give notice before trial by proper plea or answer, that he would read same in evidence.

Fourth. The defendant and his alleged assignor, Earnest, being purchasers with notice, also being indemnified by statute and by Corwith from all loss, are entitled to no protection, and could acquire no title upon the judgment subsequently reversed.

Fifth. Besides other reasons, the sheriff's deed to defendant Scales is invalid, because made and executed by the sheriff after the service of an injunction upon him prohibiting the executing of such deed.

Sixth. Plaintiff Magoon being a purchaser in good faith, and for a valuable consideration, of the land in question, and his deeds being first duly recorded, the sheriff's deed to defendant Scales, based upon a judgment that had been twelve years before reversed, was absolutely void.

Seventh. The Corwith judgment record, introduced on the trial by defendant Scales, of itself shows that the defendant has no title to the premises in question by virtue of the sheriff's sale.

Eighth. 1. There was no legal evidence of any assignment by Earnest to Scales of the certificate of sheriff's sale. 2. There was no such corporation as the "State Bank of Illinois," and the court never acquired jurisdiction of the corporation named the "President, Directors and Company of the State Bank of Illinois," said corporation having expired before Corwith's suit was begun. 3. Further, the proceedings by Corwith, and by Scales as purchaser, were fraudulent, subversive of rights protected by the constitution, and

void. 4. The two acts of Wisconsin Legislature, July 12, 1853, and March 23, 1854, in so far as they seek to divest by legislation granted estates, and impair the obligation of contracts, are unconstitutional.

LAW OF THE CASE.

FIRST POINT.

By virtue of Hezekiah H. Gear's trust deed to James Campbell, dated November 2, 1842, grantee, Campbell, became clothed with the "WHOLE ESTATE," in law and equity, subject only to the execution of the trust. The bank thereby took no estate or interest whatever, but merely a right to enforce the trust. And plaintiff, Magoon, being grantee of said Campbell, is vested with the whole legal and equitable title, and has the exclusive right of possession to the whole premises in controversy.

In examining said trust deed, (Trans., pp. 11 to 14,) it will be seen—

1. James Campbell is the party of the second part; the covenants of warranty are to "HIS heirs, executors, and ASSIGNS."

2. All leases are to HIS use and benefit, as the party of the second part.

3. The conveyance is to James Campbell, "*his assigns*," and he and his heirs are to stand "*seized*."

4. The prime trust expressed is, that the lands "SHALL be SOLD by him and his heirs."

5. The proceeds of the sale, "*after deducting all necessary costs and expenses*," are to be applied to the benefit of the *cestui que trusts*.

The deed was executed in Galena, State of Illinois; all the parties thereto were residents of that State; and, by the *lex loci contractus*, the trust was valid in its creation. By Illinois law, "the grantor in an instrumdnt may declare any use or trust, or confer any power upon the trustee or others, which he may choose, so that their object is not prohibited by law, by public policy, or good morals, and it will be binding. He may declare the objects of the trust, limit the time of its

operation, and confer the power to execute the trust upon the trustee or another.

Morrison *vs.* Kelley, 22 Ill., 622.

At date of said deed, November 2, 1842, it was in every respect a valid trust under Wisconsin law. The Wisconsin statute of "Uses and Trusts" and "Powers" came into effect not until January 1, 1850, embodied in Revised Statutes 1849, pp. 318, 326. Trusts in Wisconsin were regulated by common law up to the time said statute took effect.

It is elementary, that a conveyance to a trustee and "his *assigns*," or to a trustee and "his *heirs*," in trust to sell the land, vests *the fee* in the trustee, and not a mere chattel interest, because the nature of the trust would not be satisfied by a less estate.

Hill on Trustees, 344, 360.
2 Washburn on Real Property, 159.
Doe *vs.* Edlin, 4 Adolph. & El., 582.
Doe *vs.* Homfray, 6 Adolph. & El., 206.

The authorities are almost numberless, that a conveyance in trust to sell the land clothes the trustee with the legal estate, solely and absolutely, and he alone has the right of possession, and may maintain ejectment against even the *cestui que trust.*

Beach *vs.* Beach, 14 Vt., 28.
2 Washburn on Real Prop., 207.
Hill on Trustees, 403.
Fitzpatrick *vs.* Fitzgerald, 13 Gray, (Mass.,) 400.
Moore *vs.* Spellman, 5 Denio, 225; and see
Neilson *vs.* Lagow, 12 How., 98.
Stanley *vs.* Colt, 5 Wall., 119.
Shewen *vs.* Wroot, 5 East., 138.
Jackson *vs.* Van Slyck, 8 Johns., 486.
1 Greenl. Cruise Real Prop., 400.

Where land is conveyed to trustee, to sell and apply the proceeds, without any limitation as to the continuation of the trust, the *title* will remain in the trustee till the sale.

2 Wash. on Real Prop., 187.
Duke of Cumberland *vs.* Graves, 8 Barb., 595.

Where the trustee has any active duty to perform, as to *pay* over to the beneficial owner the *net* proceeds, implying that the trustee is to pay something out of the gross proceeds and calculate and adjust expenses; or where the trustee is to sell and convert the real estate into money; or where the trustee is vested with some beneficial interest apart from the trust; in all such cases the title and legal estate are vested solely in the trustee; it is not a dry estate, but an active trust, and the trustee's title is good in ejectment against the world.

Adams on Ejectment, 44.
2 Washburn on Real Prop., 159, 166.
Cooper *vs.* Whitney, 3 Hill, 95.
1 Greenleaf's Cruise on Real Prop., 363–365.
2 Black. Com., 336, 337.
Goodrich *vs.* Proctor, 1 Gray, 570.
Norton *vs.* Leonard, 12 Pick., 152.
McLean *vs.* McDonald, 2 Barb., 534.
Gillett *vs.* Treganza, 13 Wis. Rep., 472.

A trustee holding legal title may maintain ejectment even after the trust is satisfied.

Hopkins *vs.* Stephens, 2 Rand. (Va.,) 422.

The trustee, in a deed of trust, may convey the legal title of such property to a purchaser without resorting to a court of equity.

Newman *vs.* Jackson, 12 Wheat., 570.
Goodrich *vs.* Proctor, 1 Gray, 567.

The trustee may sell at private sale, where the trust is general, and no mode of sale is prescribed.

Burr *vs.* McEwen, Baldwin, 154.
Hill on Turstees, 723, 409, 410, *et passim.*
1 Greenleaf's Cruise, 389, *passim.*
Minuse *vs.* Cox, 5 Johns. Chan. Rep., 440.
Tyson *vs.* Mickle 5 Gill, 383.

By the terms of the said Gear trust-deed, it will be observ-

ed that all "*leases*" and "*privileges*" in the land, are to the trustees' own use and benefit, thereby clothing Campbell with a beneficial interest apart from the trust. The duty of Campbell as trustee is *active*, in requiring him to SELL the "lands" and "premises," a duty which he could in no wise perform, without the deed vested in him the legal title so as to execute this trust. Further, the trustee is to pay over to the beneficiaries therein named, the proceeds of the sale thus made by him, "*after deducting all necessary costs and expenses;* thereby imposing on the trustee the duty and *active* obligation, to calculate, adjust, pay, and discharge all necessary costs and expenses of the sale, however great the same might be, or to how many persons the same might be owing, or wherever such sale might take place. Can it be said this was not an ACTIVE TRUST? Can it be denied that the legal title vested absolutely in trustee Campbell? Surely, to contend that all this was but a *dry* trust, and the trustee took no estate, where such exacting and important duties were imposed, is repugnant to all reason and all law and decisions.

Besides, at the time of the execution of this trust-deed, and for years before, the seven hundred sixty acres specifically mentioned in said deed, were producing and had produced quantities of lead ore, and numbers of miners were operating thereon, holding leases from Gear, and paying no inconsiderable sums as rent. The country was new, the miners were nomads and 'constantly shifting; so, to care for this trust estate properly and its valuable products devolved no little labor on the trustee. As recompense, therefore, for this active duty, as well as for his care and supervision over the balance of the lands conveyed in the deed, it was expressly provided that "*all leases*" and "privileges" on said seven hundred and sixty acres should be to the use and benefit of the trustee as party of the second part. This of itself gave the trustee, James Campbell, the right to the rents and profits, and entitled him to the actual possession the moment any existing lease terminated. Thus Campbell had a *power coupled with an interest* in the estate granted; and this provision alone would take the deed completely out from the class of dry or

dead trusts, without referring to those other important provisions whereby in Campbell was vested not only the power but the duty to *sell* all the lands, and to apply the net proceeds to the *cestui que trust*, after deducting the costs and expenses of such sale; thereby making it necessary for him to make deeds, and perform other active duties, in order to fulfil the trust. To say that Campbell by the terms of the deed was solemnly bound to peform all these great duties, and yet at the same time did not acquire the sole legal estate in fee as necessary to support the trust, is at once absurd and legally impossible. No, most undoubtedly Campbell, as trustee, became by this deed, the sole legal owner and holder of the estate in fee. It was absolutely necessary in order to perform the trust.

Embodied in Revised Statues of 1849, and taking effect January 1, 1850, is a chapter on "Uses and Trusts," principally copied from the New York statutes on the same subject, with one or two wide and important exceptions. Previous to the enactment of this chapter, trusts in Wisconsin were regulated solely by the common law. But this chapter provided as follows:

"SECTION 1. Uses and trusts, *except as authorized and modified in this chapter*, are abolished; and every estate and interest in lands shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided in this title.

"SEC. 3. Every person who, by virtue of any grant, assignment, or devise, now is or hereafter shall be *entitled to the actual possession of lands* and the *receipt of the rents and profits thereof*, in law or equity, shall be deemed to have a LEGAL ESTATE therein of the same quality and duration and subject to the same conditions as his beneficial interest.

"SEC. 4. The last preceding section shall not divest the estate of any trustees, in any existing trust, where the title of such trustees is not MERELY nominal, but is connected with *some power of actual disposition or management*, in relation to the lands which are the subject of the trust:

"SEC. 6. The preceding sections of this chapter shall not extend to trusts arising or resulting by implication of law, nor be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

"SEC. 11. Express trusts may be created for any or either of the following purposes:

"1. *To sell lands for the benefit of creditors.*

"2. To sell, mortgage, or lease lands, for the benefit of legatees, or for the purpose of satisfying any charge thereon.

"3. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in the last preceding chapter.

"4. To receive the rents and profits of lands, and to accumulate the same for the benefit of any married woman, or for either of the purposes and within the limits prescribed in the preceding chapter.

"5. *For the beneficial interest of any person or persons, when such trust is fully expressed and clearly defined upon the face of the instrument creating it*, subject to the limitations as to time prescribed in this title."

The above subdivision five of sec. 11 is not found in the New York statutes, and forms a most important feature. The "limitations as to time," referred to in said subdivision five, provide that, "when a remainder shall be limited on *more than two successive estates for life*, all the life estates subsequent to those of the two persons first entitled thereto shall be void." (R. S. 1849, p. 315, secs. 17, 18.)

The chapter on "uses and trusts" further provide:

"SEC. 16. Every express trust, *valid as such in its creation*, except as herein otherwise provided, SHALL vest the WHOLE ESTATE IN THE TRUSTEES, IN LAW AND EQUITY, subject only to the execution of the trust, and the person for whose benefit the trust was created *shall take* NO ESTATE OR INTEREST *in the lands*, but may enforce the performance of the trust in equity.

"SEC. 18. When an express trust is created, every estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in or revert to the person creating the trust, or his heirs, 'as a legal estate.'"

The above are all the provisions that relate to the subject. Now the trust created by the above trust deed from Gear to Campbell, November 2, 1842, was clearly not abolished, but was, on the contrary, expressly excepted, preserved, and continued by the foregoing statutes.

1. Because "the *trust was valid in its creation*, being created

in Illinois, when both there and in Wisconsin trusts were regulated by common law.

2. Because "the *power of actual disposition or management*" in relation to the lands, is expressly vested in the trustee.

3. Because the trustee, by the terms of the grant, was "*entitled to the actual possession of the lands and the receipt of the rents and the profits thereof*," all leases and privileges being to his benefit.

4. Because the "*trust is fully expressed and clearly defined upon the face of the instrument creating it.*"

5. Because the trust is expressly "to SELL *the land for the benefit*" of the *cestui que trusts*, who were the creditors of the grantor, Gear.

6. Because the whole scope and intention of the trust were obviously to require of trustee Campbell certain active duties, and to perform several responsible acts, whereby the title should "BY HIM" be torn up by the roots from his own person, and absolutely "SOLD" and transferred to purchasers, however many, and whatever the labors and expenses thereof might be, giving him sole and complete control over the whole matter, title, rents, and all.

In the recent case of White *v.* Fitzgerald, 19 Wisconsin Rep., p. 480, the supreme court decide:

"Section 11 provides that express trusts may be created for the purposes therein mentioned. It then enumerates four classes of express trusts, being the same as those in the New York revised statutes, and which are usually called active trusts; then follows the fifth subdivison, which is not found in the New York statutes, and first appeared in this State in the Revised Statutes of 1849. It authorizes express trusts to be created 'for the beneficial interest of any person or persons, where such trust is fully expressed and clearly defined upon the face of the instrument creating it, subject to the limitations as to time prescribed in this title.' We know of no judicial decision giving a construction to this fifth subdivision. It appears to us to be broad enough to include such trusts, passive and active, as are not otherwise provided for or prohibited, whenever they are fully expressed and clearly defined upon the face of the instrument creating them. We see no reason why any written instrument that was sufficient as a

declaration of trust before chapter 84 'of Uses and Trusts' was incorporated into our laws, and which is not affected by the limitations as to time, is not sufficient now; or at least so far valid that the *cestui que trust* will be protected. In cases not otherwise provided for he has a right to the aid of a court of equity, as formerly."

But still more recently, in a case directly in point, a case that should seal and settle every doubt on this subject, if there be, in fact, any remaining doubt whatever, the Wisconsin supreme court, in Goodrich, Trustee, *v.* City of Milwaukee, say:

"By the statute of 'Uses and Trusts,' (Revised Statutes, 1858, chapter 84,) passive trusts are abolished, but active trusts are not. Every express passive trust is abolished, and the deed or instrument by which it is created, or attempted to be, takes effect as conveyance directly to the *cestui que trust*, in whom the legal title vests, and the trustee acquires no estate or interest whatsoever. Such must be held to be the operation of sections 3 and 5 of the statute. A conveyance of land from A to B, to the use of, or in trust for C, the trustee having no active duties to perform, constitutes a passive trust, and the trustee takes no title, but the same vests immediately and absolutely in the *cestui que trust*, to the extent of the estate granted.

"But that active trusts of whatever kind, provided they be such as were lawful before the passage of the statute, are not abolished by it, nor intended to be, but subject to the limitations as to time prescribed by the title, of which the chapter is a part, may still be created, is manifest by the fifth subdivision of section 11, as also by section 6. As was observed in the opinion of the court in White *v.* Fitzgerald, 19 Wis., 487, subdivision five of section eleven is not found in the statute of New York, and first appeared in this State in the Revised Statutes of 1849. The addition of that subdivision to the four which precede it, and which are found in the statutes of New York, establishes, as it was undoubtedly intended to do, a policy in this State upon the subject of active trusts entirely different from that which prevails in the State of New York. It shows very clearly that no active trusts were intended to be affected or abolished by any provision of the statute, though the language of some of its sections literally construed may be broad enough to include them, but that any such trust may still be created when, in

the language of subdivision five, "it is fully expressed and clearly defined upon the face of the instrument creating it.

"Upon full consideration we are satisfied that such is the true construction of the statute. It is certainly the only one by which its various provisions can be harmonized and effect given to each. It is sustained by White *v.* Fitzgerald, above cited, though not by Marvin *v.* Titsworth, 10 Wis., 320. In the latter case the New York decisions were followed, and the meaning and effect of subdivision five were overlooked. That case was erroneously decided, and must be overruled.

"The declaration of trust in this case contained in the deed of the land made to the plaintiff is as follows: 'To have and to hold the said premises and appurtenances to the said party of the second part, his heirs and assigns, in trust for the sole use, benefit, and behoof of the said Mary H. Belcher, her heirs and assigns forever, that is to say, in trust for the said party of the second part to bargain, sell, and convey, and to lease and demise the said premises and to mortgage the same, as he may be directed by the said Mary H. in writing, and to pay over to the said Mary H., taking her individual receipt therefor, all moneys arising or to arise from the said property, whether from the rents or from the sale or mortgaging thereof, or to reinvest the same as the said Mary H. may from time to time direct in writing.'

"There can be no doubt that this was the creation of an active trust, and, as such, valid under the statute. The plaintiff, therefore, being the trustee of an express trust, and clothed with the legal title, is authorized to sue in his own name, without joining his *cestui que trust.*"

The above decision made at the June term, 1869, from the certified copy of the opinion, gives an authoritative exposition of the Wisconsin statute upon the subject of trusts, and makes it clear and perfectly conclusive that the active trust embraced and granted in Gear's trust deed to Campbell was not only not abolished, but expressly preserved, continued, and enforced by the statute. The above case is directly and completely in point, and the trust therein decided is identical with the trust at bar.

Campbell, therefore, being trustee of an active trust, valid in its creation, with the power of actual disposition and management of the trust estate, and vested with a personal beneficial interest apart from the trust, became clothed with the

"WHOLE ESTATE, both in law and equity," and the beneficiaries, the President, Directors, and Company of the State Bank of Illinois took "NO ESTATE OR INTEREST in the lands" whatever.

Mark, the construction of said trust deed has never been before any Wisconsin court; the rights of the parties under it are not *res adjudicata*, but entirely *res integra*. The Corwith litigation, in not one of its successive stages, ever reached this question in any respect whatever. Now, for the first time, in this case, in the court below and here, we present in behalf of the plaintiff, to the reason and conscience of this learned tribunal, these his rights, feeling assured they are based on law, on justice, and impregnable truth, and should evoke the approving judgment and candid judicial affirmance of this court.

But it may be urged that Wisconsin Revised Statutes 1849, p. 542, sec. 65, gave authority to sell the premises in controversy by execution in the Corwith suit. That section provides:

"Lands, tenements, and real estate, *holden* by any one in trust or for the use of another, shall be liable to debts, judgments, executions, and attachments against the person to whose use they are *holden*."

Originally, by common law, equitable estates were not levyable or attachable for the debts of the *cestui que trust*. (2 Washburn on Real Prop.; Hill on Trustees; Thornhill *vs.* Gilmer, 4 Smedes & Marsh., 153.) Such estates were first made liable by act of Parliament, 29 Charles II. This act of Parliament was repealed by a Michigan territorial statute, in the year 1810. (See Trask *vs.* Green, 9 Mich., 358.) In this Michigan case, *held*, that the statute of uses and trusts, as enacted 27 Henry VIII, and the statute 29 Charles II, subjecting trusts of the debtor to seizure on execution, never had force in Michigan, or, if so, they were both repealed in 1810 by a territorial statute; and that from 1810 up to March 1, 1847, when the Michigan statute of "Uses and Trusts" first came into effect, uses and trusts were measured and regulated only by the common law. Now, the act of Con-

gress, April 20, 1836, entitled "an act establishing the territorial government of Wisconsin," expressly declared, "the existing laws of the Territory of Michigan shall be extended over said Territory of Wisconsin." (Statutes of Wisconsin, 1849, p. 784, sec. 12.) It follows, then, that from 1836 up to January 1, 1850, when our Wisconsin statute of "Uses and Trusts" first came into effect, uses, trusts, and the liability of trust estates to execution and seizure, were regulated solely by common law, with the single exception of the section above stated.

Now, said section has clearly no application to the case at bar. The statute, being in contravention of common law, will be construed strictly. It was enacted in Wisconsin, in the Territorial Laws 1839, p. 232, sec. 46, eleven years before the chapter "of uses and trusts" took effect. Its obvious application is only to those trust estates where the trustee had merely a NOMINAL interest, where there is no active duty required of the trustee, but merely a dry or passive trust, where lands are simply "holden" for the use of another by a trustee divested of any power of disposition or right of possession over the lands so "holden;" exactly in the case where, by the old statute of 27 Henry VIII, in England, the trust was *executed* in the *cestui que trust*, and confirmed in him the legal estate. To such trusts only this territorial statute applied; but it never applied, nor was it ever intended to apply, to *active* trusts, or to those trust estates that were preserved and continued by our chapter "of Uses and Trusts" of 1849.

The court will notice, this section applies only to lands "holden" in trust for another; thereby applying only to passive, dry, and dead trusts; but in the case at bar, Campbell, trustee, was "SEIZED" of the lands in express words, connected with the power and duty to SELL the lands, to DEDUCT the expenses, to APPLY the proceeds, to use for his benefit the rents; in every respect an ACTIVE trust. Campbell's estate was such, therefore, as not to be within this section, and not seizable or divestible by any proceedings against the *cestui que trust*. For what inconsistency it would be for the statute, in one place, to declare the "WHOLE ESTATE, in law and equi-

ty," vested in him as trustee, and the *cestui qne trust* should "take NO ESTATE or INTEREST" in the lands; and yet, in another place, to declare the same lands absolutely divestible by a proceeding against the *cestui que trust*, who held "*no estate or interest*' whatever. This would be a statute authorizing the taking away, by process against a person who had NO ESTATE, the entire interest of another who held the WHOLE ESTATE! Such inconsistency will not be tolerated. No court will construe statutes so as to lead to such flat absurdity; yet this inconsistent construction is the only one whereby Campbell's estate could be divested by any process against the bank.

Smith *vs.* McCann, 24 Howard, U. S., 398.
Brewster *vs.* Power, 10 Paige Ch. R., 562.
Garfield *vs.* Hatmaker, 15 N. Y., 475.
Trask *vs.* Green, 9 Michigan, 358.
Maynard *vs.* Hoskins, 9 Michigan, 485.
Gorham *vs.* Wing, 10 Michigan, 486.
Smith's Commentaries, 631, sec. 486.

No conveyance by a *cestui que trust* can divest the trustee of his legal estate. But a trustee, as the owner of the legal estate, may convey the same, and thereby pass the legal title to the same to his grantee.

2 Washburn on Real Property, 202.

But a conveyance, in which both the trustee and *cestui que trust* join, will pass a clear title to the purchaser, if they are otherwise competent to make a deed.

2 Washburn on Real Prop., 207.
Parker *v.* Converse, 5 Gray, Mass., 336.

Equitable estates are not the subjects of seizin and disseizin. These is no escheat of said estates, and if all the heirs of a *cestui que trust* fail, the entire estate becomes absolute in the trustee.

2 Washburn on Real Prop., 185.
1 Greenleaf's Cruise on Real Prop., 397.

But again, the corporation, "the President, Directors, and Company of the State Bank of Illinois," ceased to exist November 1, 1848, and thereafter Campbell stood "seized" of the lands as trustee, not for the corporation that had already expired, not for dead beneficiaries; this he could not do. There can be no trustee *for the dead.* But he became trustee of the assignees of the original *cestui que trusts*, by virtue of the deed executed October 31, 1848, by the President, Directors, and Company of the State Bank of Illinois, to Manly, Calhoun, and Ridgely, who thereupon became the only beneficiaries. Thenceforward these assignees alone had, up to the time of conveyances to the plaintiff, the right in equity to enforce the performance of the trust. Neither they nor their grantors, the original *cestui que trusts*, had any "*estate* or *interest* in the lands." The "WHOLE ESTATE, in law and equity," was in the trustee.

Now, the right which the bank corporation originally held to enforce the trust in equity must be confessed to be either assignable or not assignable. If it were not assignable, then when the corporation expired, the whole estate became absolute in the trustee. But if it were assignable, as we think it was, then it became vested in the three assignees. What vested? Certainly *no estate or interest in the lands*, that either by common law or statute was subject of seizure, but simply a right in equity to compel the trustee to perform the trust.

The premises in controversy therefore having never belonged to the bank, and that would not "belong to the bank, had it not ceased to exist," but the "whole estate in law and equity" being vested in trustee Campbell, said Campbell never having been a party to the Corwith proceedings, and never having been in court at all, the whole Corwith proceedings against "the State Bank of Illinois," and the defendant's sheriff deed based on them, are, so far as Campbell's title in the premises is affected, wholly and absolutely void. No legal defence whatever to plaintiff's ejectment.

We observe that Uri Manly, one of the three assignees, died in 1864; John Calhoun resigned in 1859, died in 1861; Ridgely, the survivor, by the terms of the deed dated Octo-

ber 31, 1848, as well as by common law, could convey all the rights and estate vested in said three assignees by said deed. (Trans., 14–16, 56–57.

Peter *vs.* Beverley, 10 Peters, 234.
2 Story Eq. Juris., § 1062.
2 Washburn on Real Prop., 198.

A power is coupled with an interest where the trustee has a right to the possession of the legal estate, or where he has a right in the subject over which the power is to be executed, or has any interest, however small, in the subject or its proceeds. Such trusts are irrevocable, vest the legal estate in the trustee, and if granted to several trustees, the survivors or survivor may rightly execute the trust, and convey the legal estate. So, also, with all ACTIVE trusts,

2 Washburn on Real Prop., 198, 199, 315, 323.
Peter *vs.* Beverley, 10 Peters, 234.
Hill on Trustees, 303, 442, 473.
Wisconsin R. S. 1849, p. 324, sec. 39.
Hunt *vs.* Rousmaniere, 2 Mason, 244.
Jackson *vs.* Schauber, 9 Cowen, 186.

A *cestui que trust* may, by parol, direct the conveyance of land held in trust for him, and a conveyance in accordance with such directions will be good.

Orton *vs.* Knab, 3 Wisconsin, 576.
Arrington *vs.* Cherry, 10 Georgia, 429.
Hill on Trustees, 278.
2 Washburn on Real Prop., 211.

Mark. The Wisconsin special act, July 12, 1853, under which Corwith's suit began, authorized enforcement of satisfaction only "out of moneys, credits, effects, or property, that *would belong* to such corporation had the same not ceased to exist." The repealing act of 1854 contains the same identical words quoted, and does not add thereto. However, the writ of execution, and the notice of sheriff's sale, and the sheriff's deed, in the Corwith case, all describe the property

as simply "the property of the State Bank of Illinois," not as the interest that "would belong" to said bank "had the same not ceased to exist." The proceedings, therefore, were a clear departure from the acts themselves specially authorizing them; and those acts of the legislature, if they were not palpably unconstitutional, would form no support or protection for proceedings that thus were essential departures, and not conformable to them in required particulars.

The writ of execution being the sole authority of the sheriff to make the levy and sale, being without seal, furthermore only authorizing the sheriff to satisfy the judgment out of "the property of the State Bank of Illinois," it certainly follows that the levy and sale thereunder were absolutely void; without the defendant can show that the premises in question were "the property of the State Bank of Illinois" at the time of such levy and sale; and that the State circuit court had jurisdiction; that there was a valid judgment against "the State Bank of Illinois;" and that an execution without seal is authority for the sheriff to divest such title and estate.

But we answer from the proofs:

1. There *never* was a corporation named "The State Bank of Illinois."

2. The corporation, "The President, Directors, and Company of the State Bank of Illinois," had expired years before the Corwith suit was begun.

3. The premises in question *never* was the property of the bank, nor had such corporation ever "any estate or interest" therein, but years before did once have a right simply to enforce in equity a trust.

4. That right had years before passed to assignees who never were made parties to Corwith's suit.

5. Campbell, the trustee of an active trust, "clearly expressed on the face of the instrument creating it," alone held the legal title, and had no notice or service in Corwith's proceedings whatever.

6. The trust in Campbell was never abolished or affected by the statute of "Uses and Trusts," but was of a class that

was expressly excepted, preserved, and continued by the statute.

7. No law of Wisconsin, and no special act, ever authorized such an estate and title as was held by Campbell to be swept away without notice or day in court, nor ever subjected to levy or seizure a simple "right in equity to enforce the performance of a trust."

8. All these questions as to Campbell's estate, and the title and rights of plaintiff Magoon, his grantee, have never been adjudicated by any court; but now for the first time in the court below and here are presented clothed, like Achilles, with invulnerable law, and shining like his shield with justice that should be unconquerable.

9. All the Corwith proceedings, so far as trustee Campbell and plaintiff Magoon are concerned, are simply *coram non judice* and absolutely void.

Second Point.

The sales under Corwith's executions were void, being without seal; and the purchaser had a perfect remedy against Corwith, the execution creditor, for the purchase money, *and interest*.

2. "All writs * * shall be sealed with the seal of the court from which the same may issue." (Wisconsin R. S. 1849, p. 493, 760.)

A seal to the writ of execution is absolutely imperative by those statutes, as it always was by common law.

See Insurance Company *vs.* Hallock, 6 Wall., 556.)

"Sec. 107. If the purchaser of any real estate, sold by virtue of any execution, his heirs or assigns, shall be evicted from the possession of such real estate, or if, in an action for the recovery thereof, judgment shall be rendered against him in consequence,

"1. Of any irregularity in the proceedings concerning such sale; or,

"2. Of the judgment upon which such execution issued being vacated or reversed;

"Such purchaser, his heirs or assigns, may recover of the

party for whose benefit such real estate was sold, the amount paid on the purchase thereof, with interest."

Wisconsin R. S. 1849, p. 548, sec. 107.
Wisconsin R. S. 1858, p. 793, sec. 77.

The general rule is, that where the party takes by statute extent, or title on record, every thing essential to that title must be apparent on the record. Statute title includes nothing by implication, and statutes must be strictly pursued, or the proceedings are void.

United States *vs.* Slade, 2 Mason, 71.
2 Hilliard on Mortgages, 255.
Winner *vs.* Fitzgerald, 19 Wisconsin, 393.
Talbot *vs.* Woodle, 19 Wisconsin, 174.
Thatcher *vs.* Powell, 6 Wheaton, 119.
Elliott *vs.* Peirsol, 1 Peters, 328.
Williams *vs.* Peyton's Lessee, 4 Wheaton, 77.
Fiske *vs.* Anderson, 33 Barbour, 71.
Sharp *vs.* Speir, 4 Hill, 76.
Striker *vs.* Kelly, 2 Denio, 323.
Doughty *vs.* Hope, 3 Denio, 595.
Sherwood *vs.* Reade, 7 Hill, 431.
Jackson *vs.* Shepard, 7 Cowen, 88.
Davison *vs.* Gill, 1 East, 64.
Atkins *vs.* Kinnan, 20 Wendell, 241.
Cutler *vs.* Wadsworth, 7 Conn., 6.
Williams *vs.* Cable, 7 Conn., 119.
Todd *vs.* Philhower, 4 Zabriskie, (N. J.,) 796.

A purchaser acquires no title to property which he buys at sheriff's sale, *unless it actually belonged to the judgment debtor, and only such interest as such debtor had at the time of the levy and sale.*

Hunter *vs.* Hulings, 37 Penn. S. R., 307.
Frarrant *vs.* Thompson, 5 Barn. & Ald., 826.
————, 3 Starkie, 130.
Buffum *vs.* Deane, 8 Cushing, 35.
Hewson *vs.* Deygert, 8 Johns., 334.

Starke *vs.* Harrison, 5 Richardson, S. C., 7.
Harth *vs.* Gibbes, 3 Richardson, S. C., 316.
Phillips *vs.* Johnson, 14 B. Monroe Ky., 172

An execution which is void may be objected to by any person whose interests are affected by it.
Bennett *v.* Gamble, 1 Texas, 124.

An execution and sale under a void judgment are void.
Gray *v.* Hawes, 5 California, 562.
Sanders *v.* Rains, 10 Missouri, 770.

An execution issued upon a judgment after the defendant's death, is void.
Whitehead *v.* Cummins, 2 Carter, Ind., 58.
Davis *v.* Young, 2 Monroe, Ky., 60.

The general rule, *caveat emptor*, applies in the sale of lands to all judicial sales, whether made by marshals, sheriffs, constables, or special commissioners appointed by the court.
4 Scammon, 486.
McWhorter *v.* Beavers, 8 Georgia Rep., 300.
Rocksell *v.* Allen, 3 McLean, 357.
The Monte Allegre, 9 Wheaton, 616.
Atkins *v.* Sawyer, 1 Pickering, 351.
Yates *v.* Bond, 2 McCord, 382.
Creps *v.* Baird, 3 Ohio, N. S., 277.

Irregular process is void and a nullity from the beginning.
2 Dunlap's Practice, 777.
Woodcock *v.* Bennet, 1 Cowen, 735.
Read *v.* Markle, 3 Johnson, 523.

The bank corporation having ceased to exist, being dead in law, any execution against it is thereafter *prima facie* void.
Ransom *v.* Williams, 2 Wallace, 313.
Hildreth *v.* Thompson, 16 Massachusetts, 191.
Woodcock *v.* Bennet, 1 Cowen, 741.

All processes issuing without a seal, from a court having and using a seal, are void.

Boal *v.* King, 6 Hammond, 11.

A writ of attachment without seal is void.

Williams *v.* Van Metre, 19 Illinois, 293.

Garland *v.* Britton, 12 Illinois, 232.

If an execution is issued without seal, it is void; all the sheriff's acts under it are absolutely void; and the purchaser will acquire no right whatever to the property purchased at the sale.

Bybee *v.* Ashly, 2 Gilman, Ill., 151.

Beal *v.* King, 6 Hammond, Ohio, 11.

The title of a stranger to property wrongfully sold on execution, as the property of the judgment debtor, does not pass to the purchaser, to the exclusion of the stranger's title, although the purchaser may have acted in entire good faith. So as to *chattels* in possession, *a fortiori* as to *realty*.

Chambers *v.* Lewis, 28 New York, 454.

16 Abbott, 433.

Ball *v.* Pratt, 36 Barbour, N. Y., 402.

Hoyt *v.* Van Alstyne, 15 Barbour, N. Y., 568.

The sheriff is a trespasser *ab initio*, if he attempts to serve or execute *even* a *voidable* writ. *A fortiori* if the writ be *void*.

Chapman *v.* Dyett, 11 Wendell, 31.

Where a party relies on a sheriff's deed for title, he must show a valid judgment, a *valid execution*, a valid levy, and a valid sale.

Bowen *v.* Bell, 20 Johnson, 338.

Weyand *v.* Tipton, 5 Ser. & Rawle, 332.

Wilson *v.* McGee, 2 A. K. Marshall, 600.

Chiles *v.* Bernard, 3 Dana, 95.

Beal *v.* King, 6 Hammond, 11.

2 Washburn on Real Estate, 570.

Jackson *v.* Roberts, 11 Wendell, 422.
Carpenter *v.* Schaffner, 2 Carter, Ind., 465.

A person who is not himself a party or privy to a judgment, is not bound by it in any respect; and the same as to him is not *res adjudicata.*

Lenox *v.* Hotrebe, Hemstead, 251.
Hollingsworth *v.* Barbour, 4 Peters, 466.
Harris *v.* Hardeman, 14 Howard U. S., 334.
Moore *v.* Cason, 1 Howard, Miss., 53.

To authorize any proceedings on a judgment, it is essential that the court have jurisdiction of the person and the subject-matter; the want of jurisdiction may always be set up against a judgment, and such want of jurisdiction, either of the person or the subject-matter, renders the judgment, and all proceedings under it, utterly void.

Borden *vs.* Fitch, 15 Johnson, 121.
Slocum *vs.* Wheeler, 1 Day, 429.
Bissell *vs.* Briggs, 9 Massachusetts, 464.
Buchanan *vs.* Rucker, 9 East, 192.
Harris *vs.* Hardeman, 14 Howard, U. S., 334.
Rose *vs.* Himely, 4 Cranch, 241.
Elliott *vs.* Piersol, 1 Peters, 328.
Pollard *vs.* Wegener, 13 Wisconsin, 569.
Supervisors *vs.* Le Clerc, 4 Chandler, Wisconsin, 56.
Rape *vs.* Heaton, 9 Wisconsin, 328.

Want of jurisdiction makes a judgment void, and such judgment and proceedings under it may be impeached collaterally.

Tiffany *vs.* Glover, 3 Iowa, R., 387.
Fladland *vs.* Delaplaine, 19 Wisconsin, 459.
Falkner *vs.* Guild, 10 Wisconsin, 563.
Pollard *vs.* Wegener, 13 Wisconsin, 569.
Campbell *vs.* Brown, 6 Howard, Mississippi, 106.
Evans *vs.* Percifull, 5 Pike, Arkansas, 424.
Swiggart *vs.* Harber, 4 Scammon, 364.

A decree which purports to divest the legal title from one in whom it is not vested, can have no effect on the title.

Harmer *vs.* Harris, 1 McLean, 44.

———, 7 Peters, 563.

If the record does not show that the state court in fact decided the case on a question of local law; the United States Supreme Court will not infer that it was decided upon such point, if such decision would be erroneous.

Neilson *vs.* Lagow, 12 Howard, U. S., 98.

A want of jurisdiction of the subject-matter is not aided by a plea to the merits; and the consent of parties, whether express or implied, cannot give jurisdiction.

Wyatt *v.* Judge, 7 Porter's Ala., 37.

Weatherbee *v.* Weatherbee, 20 Wisconsin, 499.

Litchfield *v.* Burwell, 5 Howard's N. Y., 341.

Mordecai *v.* Lindsay, 19 Howard's U. S., 199.

Montgomery *v.* Anderson, 21 Howard's U. S., 386.

The principle on which a purchaser at a sheriff's sale was protected, although the judgment should be subsequently set aside, was, that as he had parted with his money in good faith and without notice, he had no remedy in case of loss. (See Woodcock *v.* Bennet, 1 Cowen, 734.) But the Wisconsin statute, above quoted, gave the purchaser a perfect remedy against the execution creditor, *for his purchase-money and interest, in case he be evicted from the land by reason of any irregularity in the proceedings or by a reversal of* the judgment. So, the statute giving the purchaser a complete remedy, the reason for upholding sheriff's sale notwithstanding the reversal of the judgment, or a prime irregularity in the proceedings, fails; and the reason for the rule failing, the rule itself must fail. *Cessante ratione legis cessat ipsa lex.* (Coke-Littleton, 70*b*, Broome's Legal Maxims, 118.) Besides, the statute contemplates the setting aside of a sale on the reversal of the judgment. Such was the clear intendment of the legislature; *it authorizes the setting aside*, whenever the judgment be re-

versed, else why provide a remedy for the purchaser in such case, when his purchase could not be set aside before? Under this statute, every sale upon a judgment subsequently reversed should *ipso facto* stand annulled. *A fortiori* when the execution had no seal, and the whole proceedings were *coram non judice*, fraudulent, against all equity and law, and void.

THIRD POINT.

The sheriff's deed to defendant, Scales, being executed more than two years after issue joined, made it incumbent on defendant to give notice before trial, by proper plea or answer, that he would read the same in evidence.

Among the rules of practice of the United States circuit court for Wisconsin, is this:

"The laws that may be in force in the State relating to practice and evidence, not inconsistent with the laws of the United States, or the decisions and rules of the supreme court, or these rules, are to be deemed and considered as rules of this court, so far as applicable." (Rules of Practice, Rule 1, p. 66.)

Those rules were adopted May 1, 1863, and are published in book form. There is no rule allowing, directly or indirectly, a deed to be read in evidence that was executed after issue joined, without a proper plea or notice thereof first made.

By the statutes of Wisconsin, the different forms of action known to the common law are abolished. (Revised Statutes, 1858, p. 721.) The plaintiff is required to state in his complaint the facts constituting his cause of action in ordinary and concise language, with a prayer for the relief to which he may deem himself entitled. (Id., chap. 125, sec. 4.) To the complaint, the defendant must answer either by a denial of its allegations, or by a statement of any new matter constituting a defence. (Id., chap. 125, sec. 10.) The fictions of the action of ejectment at common law have no existence. (Id., chap. 141, 146.) The names of the real claimants and defendants must appear in the pleadings. (See chaps. 125,

141, secs. 2, 3, and chap. 146.) The complaint must allege the possession or seizin of the premises, or of some estate therein by the plaintiff, on some day to be stated, the subsequent entry of the defendant thereon, and his withholding the same from the plaintiff. (Chap. 141, secs. 4, 5, 8.) A denial of its allegations puts in issue the title of the plaintiff at the date alleged, or at least his title at the commencement of the action. Any title acquired subsequent to the issue thus joined must be set up by a supplemental answer, in the nature of a *plea puris darrein continuance.*

"SEC. 41. The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint, answer, or reply, alleging facts material to the case occurring after the former complaint, answer, or reply, or of which the party was ignorant when his former pleading was made," (Revised Stats., 1858, p. 726, sec. 41, as amended in 1859, chap. 91.)

"SEC. 18. The practice in actions relating to real estate shall be the same in all respects as in personal actions, except where otherwise specially provided by law, and all the provisions of law respecting pleadings, process, records, and judgments in personal actions, shall, so far as the nature of such actions will admit, apply to actions relating to real estate." (Revised Stats., 1858, p. 863, sec. 18.)

Every matter of defence, which a party could have pleaded *puis darrein continuance*, must be set up by supplemental answer. The Wisconsin Code of Practice is copied verbatim from the New York code, and on this point see the following decisions:

Hoyt *vs.* Sheldon, 4 Abbott, (N. Y.,) 59.
Morel *vs.* Garelly, 16 Abbott, (N. Y.,) 269.
Sandford *vs.* Sinclair, 3 Denio, 269.
Strong *vs.* Strong, 28 Howard. (N. Y.,) 432.
Matteson *us.* Curtis, 14 Wisconsin, 436.
Van Pelt *vs.* Kimball, 18 Wisconsin, 362.
Hendricks *vs.* Decker, 35 Barbour, (N. Y.,) 298.

The code in California is similar to that adopted in Wisconsin and New York; and this court, in the interesting case Hardy *vs.* Johnson, 1 Wallace, 371, has expressly decided,

that "a title acquired by the defendant in ejectment, after issue joined in the action, can only be set up by a supplemental answer in the nature of a plea *puis darrein continuance.*"

Fourth Point.

The defendant and his alleged assignor, Earnest, being purchasers with notice, also being indemnified by statute and by Corwith from all loss, are entitled to no protection, and could acquire no title, upon the judgment subsequently reversed.

I. It is a universal rule of law, that a purchaser of real estate with notice of an outstanding title takes subordinate to that title. If that title be perfect, the purchaser with notice acquires no estate or interest whatever as against the holder of the outstanding title, his heirs, assigns, or grantees. It makes no difference whether the notice be constructive by record, or actual by personal information. In either case, the purchaser is bound, and so also purchasers from him if they have actual notice.

Jackson *vs.* Sharp, 9 Johnson, 151.
Trull *vs.* Bigelow, 16 Mass., 406.
McMechan *vs.* Griffing, 3 Pickering, 153.
Flynt *vs.* Arnold, 2 Metcalf, 622.
Schutt *vs.* Large, 6 Barbour, (N. Y.,) 374.
Jackson *vs.* Page, 4 Wendell, 585.
Jackson *vs.* Leek, 19 Wendell, 339.
Brown *vs.* Peck, 2 Wisconsin, 261.
Smith *vs.* Shane, 1 McLean, 22.

Whatever is sufficient to put the purchaser upon inquiry, as to the outstanding title, or equity, or trust, will charge him with full notice.

Parker *vs.* Kane, 4 Wisconsin 1.
Hodson *vs.* Treat, 7 Wisconsin 263.
Mechanics' Banks *vs.* Seton, 1 Peters 299.
Oliver *vs.* Piatt, 3 Howard 333.

Such purchase of real estate with notice of the outstanding title is a *fraud* upon the holder of such title, and as against him is void.

2 Washburn on Real Prop., 624.

Jackson *vs.* Burgott, 10 Johnson, 457.

Now, Earnest, the original purchaser at the sheriff sale, testifies, "At and before the sheriff's sale, I KENW from what everybody said *that the bank had made an assignment to trustees, and that the lands I bid in were included; that the trustees denied the right of the* sheriff and Corwith to sell; this I understood at and before the sale. I KNEW there was a question about *the title at the time.*" (Trans., 183.)

The defendant, Scales, alleged assignee of Earnest's certificate of sheriff sale, was a juror in the Corwith trial; the deed of the bank to the three trustees is in the record as part of the proceedings of that trial, (Transcript 91;) Scales testifies he heard all the papers that were read before the jury on that trial, (Transcript 184;) Bracken testifies that at the time and place appointed by the *trustees* for the sale, *Scales was present*, in 1853; that advertisements were previously published, signed by the trustees, in four different newspapers of the vicinity, offering all the lands for sale; that hand-bills to the same effect, signed by the *trustees*, were freely circulated all through La Fayette county, where Scales resided; that the *trustees* publicly adjourned the sale, and that *Scales was there at the time;* and Scales himself testifies "*that he had heard of an assignment*, and *supposed that the* TRUSTEES OWNED THE LANDS." (Transcript 184.) Foster's desposition also shows that in 1853, for four weeks, an advertisement was published in the "Galena Gazette," signed by the *trustees*, offering the lands for sale, and the paper was regularly mailed each week twelve miles distant to Scales, containing said advertisement. (Transcript, 185.)

The deed from the bank to the three trustees was executed October 31, 1848, and conveyed to them all the property and rights of the bank of every kind and description. (Trans., 14 and 19.)

Besides, from the recital in the defendant's sheriff deed, (Trans., 180,) it appears the assignment of the certificate by Earnest to Scales was May 14, 1858, which was after the sheriff sale had been set aside; after Scales and Earnest had appealed; after the judgment had been reversed, the writ quashed, and the "State Bank of Illinois," as defendant, had been discharged. All of which facts to both Scales and Earnest were fully known, they living in the immediate vicinity, in constant counsel with Corwith's attorney, who was likewise their own attorney in the matter; they also joining in bonds on the appeal.

Earnest, therefore, having purchased at the sheriff's sale, with full notice of the outstanding title or equity in the trustees, and having assigned to Scales, who also had full notice thereof, each took only subordinate to that outstanding interest; and if this court hold that the trustees acquired complete title by virtue of the bank's deed of assignment, dated October 31, 1848, then it irresistibly follows that neither Earnest nor Scales either did or could acquire any title or interest whatever, as against said trustees or their grantee, said plaintiff, Magoon.

Hence, upon this part of the case, the plaintiff on the trial in the court below asked the 9th, 10th, 12th and 13th instructions to the jury, (Trans., 201,) but the judge overruled the same; and upon overruling the 11th instruction, (Trans., 201,) the judge did decide and instruct the jury,

"The law and facts entitle the defendant to a verdict in this cause!"

We ask this court solemnly to answer whether this instruction SHALL BE SUSTAINED against the proofs given on this trial, and against the decisions of courts, both State and National, as well as those of the Old World, that are of binding and convincing authority wherever judicial tribunals subserve their great object to protect human rights!

II.

But, in addition to the doctrine of *caveat emptor*, that applies to all sheriff sales, see authorities quoted under SECOND POINT

above; besides, the fact that a sheriff in selling, exercises a mere naked power, takes nothing by intendment, must act conformably to the power strictly, and if he proceeds in excess of the power, he becomes a trespasser *ab initio.* (Carwick *v.* Myers, 14 Barbour's N. Y., 9; Jackson *v.* Roberts, 11 Wendell, 432; Tiernan *v.* Wilson, 6 Johnson's Chancery R., 411; Crocker on Sheriffs, *passim.* Besides the fact the execution was without seal, hence void; in addition to the fact that, under the Wisconsin statute, the purchaser had a plain and perfect remedy against Corwith, the execution creditor, for his purchase-money and interest;—besides all this, Corwith *agreed to indemnify and save from all loss the purchasers at the sale!* Both Scales and Earnest bought at the same place, on the same day and same hour, at the same sheriff sale, each a tract in the same identical section, (Trans., 106.) Earnest testifies: "Before the sale I understood Mr. Corwith had said *he would indemnify any purchaser at the sheriff's sale from any loss; I felt he would stand by us in case we had trouble, or in case we should lose the land; I felt he would save us from loss!* (Trans., 183.)

Scales, feeling that "he would not lose anything," and resting on the statute remedy in case of loss, and further resting on Corwith's agreement to "idemnify any purchaser from any loss," consented to take an assignment of Earnest's certificate, even after his own sale, and also Earnest's had been wholly set aside, the judgment reversed, and the whole action and parties adjudged out of court!

Now, it is within the current of all decisions, that where the plaintiff in the execution purchases at a sheriff sale, and the judgment be afterward reversed, the sale is annulled and the plaintiff takes no title. He having parted with no money, loses nothing by the sale, when his judgment is reversed.

Corwith *vs.* State Bank of Illinois, 15 Wisconsin, 289.
Harrison *vs.* Doe, 2 Blackford, 1.

And when, as in this case, the purchaser buys with an agreement with the plaintiff in the execution that the plain-

tiff will indemnify him from all loss, then, if the judgment be reversed, such sale should with equal reason stand annulled. It is the same by every principle as if the plaintiff himself purchased. *Ubi eadem ratio ibi idem jus.* "Like reason maketh like law." (Coke-Littleton, 10; Broome's Legal Maxims, 130.)

Such an agreement stamps upon the purchase *indelible fraud*, as against the execution defendant. Such purchase is strictly analogous to the purchase with full notice of an outstanding title or defect. Subordinate to such outstanding title, charged with such defect, is the purchase, in every respect. He buys at his peril; but the outstanding title of which he had notice triumphs over his fraud, and his miserable chicanery lies slain and subverted at the feet of law and honest justice.

Fifth Point.

Besides other reasons, the sheriff's deed to defendant Scales is invalid because made and executed by the sheriff after the service of an injunction upon him, prohibiting the executing of such deed.

The petition and order of injunction were made in the case of Corwith *vs.* State Bank of Illinois, in June, 1858, and expressly enjoin the sheriff of La Fayette county, among others, from executing deeds on any execution in said cause, until the further order of said court. This injunction was never changed, dissolved, or reversed. (Trans., 125–7.) Said petition and order of injunction were personally served on the sheriff, John Lutter, September 28, 1867. (Trans., 194–7.) Notwithstanding which the sheriff executed to the defendant Scales the deed on March 17, 1868. (Trans., 179–181.) On the trial in the court below, plaintiff Magoon called said sheriff as a witness in his behalf, and offered to prove by him, "That Scales had indemnified him by bond from loss by reason of executing said deed; that said sheriff was enjoined from execuiing a deed of the premises to Scales, by having said petition and injunction served upon

him; that Scales had no certificate present or in existence when said deed was executed, neither did the sheriff have any such certificate; that the injunction had never been dissolved, and was served on him months before the execution of said deed." (Trans., 198.) This testimony the judge wholly refused, and plaintiff excepted.

An injunction is not disselved, nor does it become inoperative by the abatement of the suit.

Hawley *vs.* Bennett, 4 Paige, N. Y., 163.

An injunction granted in a case in which the court has jurisdiction, even if erroneous, must be obeyed until set aside.

People *vs.* Sturtevant, 9 New York R., 263.
1 Whittaker's Practice, p. 474.
Sullivan *vs.* Judah, 4 Paige, N. Y., 444.

It is not for a party served with an injunction to determine whether it is properly or improperly issued; he must obey it while it exists.

Smith *vs.* Reno, 4 Howard, N. Y., 124.
Moat *vs.* Holbein, 2 Edward Chancery R., 188.
Crocker on Sheriffs, 20.

An assignee, obtaining sheriff deed in violation of an injunction enjoining it, *obtains no title.*

Morris *vs.* Bradford, 19 Georgia, 527.

The sheriff, being the ministerial officer of the court, must conform to its orders; but to collude "by bonds of indemnity" with the purchaser, as in this case, to flatly disobey the injunction, stamps his proceeding as fraudulent, and renders the deed obviously corrupt and void. *Nemo ex proprio dolo consequitur actionem vel defensionem.* No one can found any action or defense on his own wrong. The defendant, by fraudulent collusion with the sheriff, can surely acquire no valid title or deed through a wilful violation of the injunction prohibiting its execution.

Sixth Point.

Plaintiff, Magoon, being a purchaser in good faith, and for a valuable consideration, of the land in question, and his deeds being first duly recorded, the sheriff's deed to defendant, Scales, based upon a judgment that had been twelve years before reversed, was absolutely void.

The Corwith judgment was rendered October 20, 1854. (Trans., 96, 97.) The judgment was reversed November 17, 1855, and the *remittitur* of such reversal was filed in the La Fayette county circuit court April 3, 1857. (Trans., 127.) The sheriff's deed to Scales was not executed till March 17, 1868, (Trans., 179, 180,) twelve years and five months subsequent to the reversal of the judgment, and nearly eleven years after the filing of the *remittitur* showing such reversal.

The Wisconsin statutes provide:

"Every conveyance of real estate within this State hereafter made, which shall not be recorded as provided by law, shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any portion thereof, whose conveyance shall first be duly recorded." (Revised Statutes 1858, p. 541, sec. 25.)

The same section is also found in the Revised Statutes of 1849, page 329, section 24.

Plaintiff Magoon's conveyances were all on record prior to the commencement of this action in 1865; all duly recorded in La Fayette county, Wisconsin, where the land lies, the last deeds being placed on record July 14, 1865. (Trans., 21, 23, 24.) The aggregate consideration paid by Mr. Magoon, in cash, as shown by the deeds in the transcript, is some $5,000. The *bona fides* of his purchase no man with one scintilla of truth, and no record or proof, can question.

All judgments in Wisconsin cease to be a lien in ten years from docketing. (Revised Statutes 1858, p. 758, sec. 36; Revised Statutes 1849, p. 535, sec. 7.) Now, the Corwith judgment, reversed in 1855, and the *remittitur* of such reversal, filed April 3, 1857, obviously ceased to be a lien upon

the filing of such *remittitur*. The plaintiff, on the trial in the court below, offered to prove that when the sheriff deed was executed that *there was "no certificate of sale present or in existence."* (Trans., 198.)

The statutes further provided:

"SEC. 6. When a writ of error shall be prosecuted from any judgment of the circuit court to the supreme court, it shall not affect the lien, but the lien shall continue and bind the real estate of the person or persons against whom such judgment is rendered, the same as if said error had never been prosecuted, *unless such judgment shall be reversed by the supreme court*, and the plaintiff in error on the trial anew shall be the successful and prevailing party.

"SEC. 7. From and after ten years from the time of docketing every such judgment, it shall cease to bind or be a charge upon any such property *as against purchasers in good faith* and as against incumbrances subsequent to such judgment, by mortgage, judgment, decree or otherwise." (Revised Statutes 1849, page 535, secs. 6, 7.)

Further, the statutes provided that when lands were sold by the sheriff, on execution, he shall execute duplicate certificates of sale, one of which certificates shall be delivered to the purchaser, and the other in ten days from sale "shall be filed in the office of the register of deeds of the county." (Revised Statutes 1849, p. 544, secs. 81, 82.)

The sheriff's sale took place July 23, 1855. (Trans., 105.)

No certificate of sale to Earnest was filed, or, if so, it could not be found; hence plaintiff offered to prove that "none was in existence." (Trans., 198.)

Now, the Corwith judgment was reversed on writ of error by the supreme court November 17, 1855, and the plaintiff in error on the trial anew was the prevailing party, April 21, 1858. (Trans., 128.) The lien of the judgment unquestionably ceased the moment the *remittitur* was filed April 3, 1857, showing the reversal of such judgment. Thereafter there was no lien whatever, and no judgment: nothing at all to give notice to or charge a subsequent purchaser of the property. Even if the lien had continued ten years, as upon valid judg-

ments unreversed, it would have wholly ceased October 20, 1864.

But now, twelve years and five months after the reversal of the judgment, eleven years after the filing of the *remittitur*, and nearly three years after Mr. Magoon's conveyances are all duly on record, aye, more than two years after issue joined in this cause, Scales, still "marching on" with his and Corwith's old-time fraud, trumps out a corrupt and fraudulent sheriff's deed, and with it alone seeks to abolish all the rights and moneys paid and titles of the plaintiff. The whole litigation by Corwith, and by the defendant, Scales, as his accessory, is nothing but fraud. In its beginning, in its progress, fraud stamps its history and its every feature. Only one last cunning technicality, based on a theory that was long since exploded by reason and honesty out of courts, remains as the mask behind which the defendant can hope success. Shall that technicality, his fraudulent sheriff deed, against all justice, law, and proven facts, find now a protecting asylum in the conscience and judgment of this court?

No. The question raised upon this point has been expressly decided in New York, where like statutes on this subject exist The case was this: A sheriff sold real estate on execution against a judgment debtor, and gave to the purchaser a certificate of sale, which the statute required should be filed. Twelve years after the sale, the judgment lien having ceased, and before a conveyance to said purchaser, the judgment debtor sold said land to a third party, for a valuable consideration, who did not know of the sheriff's sale, but only that the judgment had not been wholly paid, and the deed of conveyance was duly executed: *Held*, that the sheriff's deed of conveyance subsequently executed was VOID as against said grantee of the judgment debtor.

Reynolds *vs.* Darling, 42 Barb. (N. Y.,) 418.

SEVENTH POINT.

The Corwith judgment record, introduced on the trial by defendant, Scales, of itself shows that the defendant has not title to the premises in question by virtue of the sheriff's sale.

The special act of the Wisconsin Legislature, July 12, 1853, was the sole act under which Corwith began his suit against the "State Bank of Illinois." If that act had not been passsed, there was no law or authority of the State under which he could have begun or maintained his action for one moment in court against a foreign, once "existing corporation, but which has ceased to exist or act as a body corporate." Corwith obtained from that act his sole authority to begin his suit, and its provisions were the only measure of his remedy against such dead corporation. That act provided that satisfaction of his claim might be enforced out of such property in the State, as, *first*, "*would belong* to such corporation had the same not ceased to exist," and, *second*, as at the same time was held by trustees appointed by such corporation, or pursuant to some law. The writ of attachment provided for by the act gave authority to the sheriff to attach only the property "*that would* belong to such corporation had the same not ceased to exist." Now, it is perfectly clear that property which could *not* belong to the corporation, had the same not ceased to exist—property that was expressly vested by deed in others than the corporation, so that, even if the corporation survived, the title would still rest in the grantees of such deed—such property so vested and aliened, and whose title had entirely passed away from the defunct corporation as former owner—such property was beyond the purview of the act. It could make no difference when or to whom the conveyance was made; if, in fact, the title had gone out from the corporation and become vested elsewhere, so as to be irrevocable in the grantees, such property was not reachable by the act. Only such property as necessarily and absolutely "*would belong*" to the bank, had it not expired, was within the act or could be proceeded against in enforcing a claim

Solely under this act Corwith began his suit August 13, 1853. The attachment did and could only authorize the sheriff to attach the property that "would belong" to the bank had it not ceased to exist. He had no power or authority to attach any other property whatever; he was but a

sheer trespasser if he did. By virtue of the writ, the sheriff attached vast tracts of land, including the west half of the premises in question. Now, if the lands so attached "would belong" to the bank, in the event its charter had not expired, the proceeding was so far regular; but if he attached other lands than such as "would belong," the sheriff just so far exceeded the authority of both the act and writ; he was so FAR trespasser, and his services void. The court acquired no jurisdiction of the property attached, if it did not "belong," as comprehended within the act and writ.

The act of March, 1854, provided that all suits commenced under the above previous act should be continued and proceeded with to final judgment and satisfaction, and should be governed by the provisions of said new act, and that the former act be repealed. This new act authorized the enforcement of satisfaction out of any property belonging to the expired corporation, or which would belong to, or in which such corporation has or would have an interest, had the corporation not ceased. Under this act alone all of Corwith's proceedings to judgment, execution, and sale, could be with any semblance of legality carried on subsequent to the beginning of the suit and service of the attachment. It measured his authority; it was the sole provision of law that gave any sanction to his further progress against the dead corporation. By the express terms and meaning of the act he must stand or fall.

Now, if it appeared on the trial of Corwith's suit, by uncontroverted proof, that the bank had no property whatever when the suit was begun, and that there was no property in the State that would belong to or in which the bank had or would have an interest, were it still surviving, then, when this was shown, the court had no jurisdiction whatever of the lands and property attached. Its subsequent proceedings were, so far as such property was concerned, *coram non judice*, and void.

Mark, the record shows exactly this state of case. On October 19, 1854, Calhoun, Manly, and Ridgely produced in court, as is shown in the Corwith record, (Trans., 89–96,)

and filed the deed of assignment from the bank to said three trustees, dated October 31, 1848, and also the act of Illinois Legislature of March 1, 1847. It was admitted by Corwith that said deed was executed by the president of the bank, by order of the directors; in other words, duly executed. (Trans., 95.) By the terms of said deed, all the property of the bank, of every kind and description, and wherever situated, was sold and granted, for a valuable consideration, to said Manly, Calhoun, and Ridgely, upon the *active* trusts, to collect the debts due the bank, to sell all the real and personal property, pay all the debts due from the bank, distribute the surplus among the stockholders; also, to pay all taxes and expenses, all debts contracted and unpaid in closing the bank's affairs, since March 1, 1843; and to retain $3,000 per annum for their services in performing the trust. Further, that all deeds made by such trustees, or the survivors of them, should transfer all the interest of said bank in the property so sold.

The deed thus created about the most active trusts that were ever known in the world. The duties of the trustees therein named were full of action. Action, action, glows in its every feature. Being executed in Illinois, and all its parties there residing, the deed was in every respect valid by the *lex loci contractus:* and also being the creation of active trusts, "clearly expressed upon the face of the instrument," and giving the trustees the "actual power of disposition," it was perfectly valid under the Wisconsin law as it then existed. The Wisconsin statutes upon "uses and trusts," first in force January 1, 1850, did not abolish, but expressly preserved and continued the trusts created by said deed. Therefore, being valid and active trusts, the trustees therein named, by the solemn statutory provisions, took as to all the property in the State, "the whole estate, in law and equity," in all the property of the bank, wherever situated; and thereafter the bank had, by the express terms of the statute, "NO ESTATE OR INTEREST IN" the property thereby conveyed, but merely a naked right in equity to compel said trustees to perform the trust.

Now, when said trustees produced said deed before the court, and filed the same, together with the Illinois act, and the acceptance thereof by the bank, it was absolute proof and notice to all who might claim in or under the said suit and its record that the bank had no property whatever, that either "would belong to," or in which the bank "had or would have" an "INTEREST," had such corporation not ceased to exist. The deed irrevocably conveyed the "WHOLE ESTATE," title, and interest of the bank in and to every description of property to said three trustees; and thereafter it could make no difference upon the title and property so conveyed whether the bank ceased as a corporation or not. Its property, and its whole property, was forever gone.

This proof was uncontroverted; it could not be otherwise. It was perfectly conclusive. Embodied in and forming a most important part of the Corwith judgment record, it is entitled to the same attentive consideration that any other part of the record should *have* or demand. Its language is unmistakable; it conclusively shows that the bank had not one particle of title or interest, or even equity, remaining in the property attached. It shows that the bank ceased as a corporation November 1, 1848, and that on the last day of the existence of the bank as such corporation it made such deed, vesting in the grantees, irrevocably and absolutely, *all* ALL the property of the corporation, and to the purchasers from them forever. It shows that the court had no jurisdiction, absolutely none, of the subject-matter of the property so seized, and that to further proceed upon or against such property was wholly without authority and void. It shows that the special act of the legislature, passed for Corwith's benefit, did not and could not apply to the case at bar, so far as the property was concerned, which in that case had been seized by the attachment. Beyond the entire scope and meaning of the act, property had been attached wherein the bank had no title or interest whatever, this deed conclusively showed.

When, therefore, defendant, Scales, introduces this record and proof on the trial below, instead of its supporting the

theory that he acquired title by virtue of a sheriff's sale, based on such record, it conclusively proves directly the opsite. It shows that any such title or defence in Scales is perfectly impossible.

II. By that deed the whole estate is vested in the trustees, clothed with an irrevocable interest. The creditors and the stockholders of the bank were the only beneficiaries. The deed was an executed contract on the part of the bank, and the bank having thus, in its dying struggle, conveyed its all to the three grantees, could give no more, and immediately passed from legal existence. Suppose, then, that the legislature had instantly breathed anew into the bank vital breath, and restored its charter in full force, would the property comprehended in the deed, or any interest whatever in the same, or any right or claim thereto, have reverted? No, nothing. It was all gone forever.

The deed was an executory contract on the part of the trustees, the performance of which the beneficiaries had the right to enforce in equity. Those beneficiaries, the creditors and stockholders of the formerly existing bank, had thus, by this solemn instrument, an equity which was full of importance to them; while the trustees, on their part, held the whole estate, coupled with an irrevocable individual interest, as necessary to execute the purposes of the trust. The obligation of this high contract, both on the part of the trustees and the *cestui que trusts*, mutually enforceable in equity, was sacred against legislative invasion. No legislature could subvert the rights of the parties, nor divest the trustees or the *cestui que trusts* therefrom. No legislature could destroy this solemn contract, nor impair the least of its binding and essential obligations.

When, therefore, it is urged by defendant, Scales, that, without any notice or day in court, either to said trustees or to the *cestui que trusts*, their whole estate could be snatched away in a proceeding against the dead grantor of this trust, in whom nothing remained,—when he asserts that the contract was destroyed for his benefit by the legislature, and that from its ruins sprang forth his title invulnerable to law

and constitution,—when only from such outrageous proceedings he derives his sole title and defence, it follows that the most sacred constitutional rights of plaintiff, Magoon, and his grantors must first be disregarded before the sheriff deed can be held good.

Eighth Point.

1. There was no legal evidence of any assignment by Earnest to Scales of the certificate of sheriff's sale. 2. There was no such corporation as the "State Bank of Illinois," and the court never acquired jurisdiction of the corporation named the "President, Directors and Company of the State Bank of Illinois," said corporation having expired before Corwith's suit was begun. 3. Further, the proceedings by Corwith, and by Scales as purchaser, were fraudulent, subversive of rights protected by the constitution, and void. 4. The two acts of Wisconsin legislature, July 12, 1853, and March 23, 1854, in so far as they seek to divest by legislation granted estates and impair the obligation of contracts, are unconstitutional.

I.

By Wisconsin statutes, no estate or interest in lands, nor any trust or power concerning lands or in any manner thereto relating, shall be created or *assigned*, unless by deed or conveyance in writing, subscribed by the party creating or assigning.

R. S. 1849, p. 388, sec. 6.
R. S. 1858, p. 613, sec. 6.

The terms "estate and interest" include every estate and interest, legal or equitable, vested or contingent, present or future. The term "conveyance" embraces instruments in writing.

R. S. 1849, p. 390, secs. 6, 7.
R. S. 1858, p. 615, secs. 6, 7.

By above statutes it was indispensable that the *assignment*

by Earnest to Scales be *in writing* and *subscribed* by Earnest. Plaintiff offered to prove that there was no certificate in existence when sheriff executed deed. (Trans., 198.)

The statutes authorize the sheriff to execute deed only to the purchaser, or a redeeming creditor, or to an *assignee*. (R. S. 1858, p. 795, sec. 87; amended 1863, chap. 270.

A sheriff can only make a deed of lands sold on execution to the purchaser, his representative, or to an assignee of the purchaser. A deed to a stranger would be a nullity.

Davis *vs.* McVickers, 11 Illinois R., 327.

No recitals in a sheriff's deed are proof, unless authorized by statute to be such.

Doe *vs.* Roe, 20 Georgia R., 689.

There is no statute in Wisconsin authorizing sheriff's recital in the deed to be proof of an alleged assignment, therefore such recital is no proof, not even *prima facie*. Yet Scales offered no other proof on this subject but the deed itself.

II.

(See Trans., 74 to 177.)

No service, except on John Bracken, "SAID to be an agent" of defendant. Merest *hearsay* to support jurisdiction!! (Trans., 76.)

An appearance by counsel for "State Bank of Illinois," a dead corporation, *prima facie* invalid and void, without property, legal authority first filed. Such appearance could certainly not conclude the "President, Directors, and Company of the State Bank of Illinois," another corporation, and also long since expired.

"No one can be injuriously affected by a judgment of any court who was not a party to such judgment."

Brush *vs.* Fowler, 36 Illinois, 53.

III.

"The distinction between legal and equitable actions being abolished by the code, a deed offered in evidence in an action

of ejectment may be impeached for fraud on the trial, without any such proceeding as was usual under the old practice or common law."

Reynolds *vs.* Vilas, 8 Wisconsin.

IV.

As to the acts, *unconstitutional:*

Martin *vs.* Somerville Water Power Company, 27 Howard, (N. Y.,) 161.

Green *vs.* Biddle, 8 Wheaton, 1.

Bronson *vs.* Kinsie, 1 Howard, (U. S.,) 311.

In conclusion, with confidence in the perfect justice and law of plaintiff's cause, we submit his rights to the final adjudication of this Honorable Court—the highest and most honored of the world—with honest hope that, as plaintiff's ALL is involved in your decision, full protection shall be given, and his property be housed safely by your judgment.

WILLIAM P. LYNDE,
M. M. COTHREN,
HENRY S. MAGOON,
Attorneys for Plaintiff in Error.

IN THE

SUPREME COURT,

UNITED STATES OF AMERICA.

DECEMBER TERM, 1869.

RICHARD H. MAGOON, PLAINTIFF IN ERROR,

vs.

SAMUEL H. SCALES, DEFENDANT IN ERROR.

Argument for Defendant in Error.

Beach & Barnard, Steam Print, 122 & 124 S. Clark St.

IN THE

Supreme Court, United States of America,

DECEMBER TERM, A. D. 1869.

RICHARD H. MAGOON, PLAINTIFF IN ERROR,

vs.

SAMUEL H. SCALES, DEFENDANT IN ERROR.

ARGUMENT FOR DEFENDANT IN ERROR.

This was an action of ejectment brought in the Circuit Court of the United States, for the District of Wisconsin, by the plaintiff in error against the defendant in error, to recover possession of the southeast quarter of section 32, in township 1, north of range 2, east of the fourth principal meridian, in the county of LaFayette and State of Wisconsin.

The cause was twice tried. Each trial resulted in a verdict and judgment for the defendant.

The first judgment was set aside, as of course, under the statute of Wisconsin, upon payment of costs. The last judgment was entered June 2, 1868.

The plaintiff claimed title to the premises by deed of quit-claim from Hezekiah H. Gear, of Galena, Illinois, bearing date June 17, 1867. (Record pp. 10 and 11.)

The land was patented to Gear September 1st, 1852. (Record page 9.)

Gear purchased the land at Mineral Point, Nov. 3, 1851. (Rec. pages 66, 67.)

The west half of the quarter section in question was first purchased by Peter Perry, August 4, 1835. And on the same day he assigned his interest in the land to John Atchison in presence of the Register of the land office. On the same day the east half of this quarter section was first purchased by one Richard Thomas, who also on the same day assigned to John Atchison. (Record pp. 61, 62, 63, 64, 65, 66.)

These entries were cancelled, the land not being subject to entry, as the same was mineral ground and reserved from sale. (Record pages 63 and 64.)

On the 12th day of January, 1836, John Atchison, by his warranty deed of that date, in terms conveyed (with other lands) the quarter section, now in question, to said Hezekiah H. Gear. (Record page 68.)

On the 3d of November, 1838, Gear and wife, by mortgage of that date, mortgaged this quarter section, with other lands, to the President, Directors and Company of the State Bank of Illinois, to secure the payment of $135,000.

After the description of the property comes the following language :

"To have and to hold the above described lots of land, to-
"gether with all and singular the buildings, improvements, priv-
"ileges and appurtenances thereunto, in any wise belonging or ap-
"pertaining, unto the said President, Directors and Company of
"the State Bank of Illinois, and to their successors in office, trus-
"tees, assigns or receivers forever; and the said party of the first
"part, for the consideration aforesaid, hereby bind themselves,
"their executors, administrators and assigns to warrant and for-
"ever defend the said deeded property unto the said party of the

"second part, their, successors, trustees, receivers or assigns, from "and against the claim or demand of them, the said party of the "first part, their heirs, executors, administrators or assigns, and "against the claim or demand of all persons whatever."

Then follows a statement of the giving five notes for $30,000 each by Hezekiah H. Gear, with their date and times of payment, and the condition proceeds with the language:

"Now if the said Gear shall well and truly pay at or before "maturity unto the said party of the second part his several notes, "as above described, and well and truly pay all the interest that "may accrue on the same, then this deed *and covenants*, in every "part thereof, shall be utterly null and void; but should said "party of the first part *fail well* and truly in good faith to pay "the said described notes, together with all interest that may ac- "crue thereon, then this deed shall be in full force, virtue and ef- "fect." (Record pages 70, 71, 72.)

This mortgage was recorded in Iowa County, Wisconsin, Dec. 9, 1841. (Record p. 70.)

On the 2d day of November, 1842, H. H. Gear and wife by their deed of that date conveyed the land above described, with other lands, to one James Campbell, as trustee. This deed contains this language:

"The said Hezekiah H. Gear stands and *is indebted* to the Presi- "dent, Directors and Company of the State Bank of Illinois in the "sum of fifty thousand dollars cash, *to satisfy which* the said State "Bank hath agreed to take the real estate hereinafter mentioned, "to be conveyed to James Campbell, as trustee." Again—"And "it is hereby declared and agreed by and between all parties to "these presents that the said grant of the lands and premises "hereinbefore described is made by said Gear and wife to said "James Campbell and his heirs, to stand seized of the said premi- "ses, upon the trust and confidence that the said lands shall be

" sold by him and his heirs, executors or administrators for such " sum or sums as shall be directed by said President, Directors " and Company of said State Bank of Illinois, and the proceeds " of any such sale are to be applied, after deducting all necessary " costs and expenses, to the sole use and benefit of said President, " Directors and Company, or their assigns, and if said lands are " not sold by said trustee *as aforesaid*, then the said Campbell, or " his heirs or executors, are to stand seized of the premises herein- " before conveyed for the use of the said President, Directors and " Company of said State Bank of Illinois, and their successors in " office and assigns." Gear then covenants to " warrant and for- " ever defend the said deeded property unto the said party of the " second part, his heirs, executors and assigns from and against " the claim and demand of them, the said party of the first part, " their heirs, executors, administrators *or assigns*, and from and " against the claim or demand of all persons whatever."

This deed was recorded in Iowa County (now LaFayette) Nov. 19, 1842. (Rec. pp. 11, 12, 13.)

On the 31st day of October, 1848, the State Bank of Illinois, by its President, Thomas Mather, by deed of that date, conveyed all the lands and other property of the bank to Uri Manly, John Calhoun and Nicholas H. Ridgely, who were required to close up the affairs of the bank. (Record pages 15, 16, 17.)

This deed was, in fact, spread upon the Record of Deeds in Iowa and LaFayette counties, Wisconsin—in the former, July 23, 1856, and in the latter, November 3, 1866. But it was never acknowledged so as to be entitled to be recorded in Wisconsin.

November 19, 1862, Uri Manly, Nicholas H. Ridgely *and James Campbell*, professing to act as trustees of the State Bank of Illinois, by their deed of that date, in form conveyed to the plaintiff in error, the land described in his declaration. (Record, pages 17, 18.)

July 12, 1865, said Ridgely and Campbell also professing to act as trustees and assignees of the State Bank of Illinois, made another deed to the plaintiff in error for the same land as in the deed last mentioned. (Record page 20.)

On the same last mentioned day and year, James Campbell, *trustee* by his deed of that date, in *form* conveyed the same last mentioned land to the plaintiff in error; and on the same day made a like deed, not as trustee, but in his sole individual capacity. (Record, pages 21, 22, 23, 24.)

December 29, 1852, Philemon B. Simpson, as clerk of the Board of Supervisors of LaFayette County, Wisconsin, by his deed in form, conveyed to that county the land in question. In that deed it is recited that the land was sold on the 14th day of April, 1849, to the county, at a tax sale, for the taxes due on said land for the year 1847. (Record 24, 25.)

November, 1860, the County Board of Supervisors, by resolution, authorized the clerk of the Board, and his successors, to sell and convey by deed of quit-claim and release, the lands conveyed to the county for the non-payment of taxes.

Under this power, and on the 31st day of December, 1863, John Collins, clerk of said County Board, by his quit-claim deed of that date, in form conveyed to the plaintiff in error the land in controversy. (Record, p. 26, 27.)

By an act of the Legislature of the State of Wisconsin, approved July 12, 1853, it was declared that—"Any person or persons, "body or bodies corporate, having any debt, claims, or demand "not sounding in tort, against any foreign, once existing corpora- "tion, but which had ceased to exist or act as a body corporate, "from *any cause* whatever, such person or persons, body or bodies, "may enforce satisfaction of such debt, claim or demand, out of "any moneys, credits, effects, or of property lying, or being in "this State, whether real or personal, or mixed, in case such "moneys, credits, effects, or property would belong to such corpo- "ration, had the same not ceased to exist, or act, as a body corpo- "rate, whether managed, controlled, or held at the disposal of a "trustee or trustees, assignee or assignees, agent or agents, of or "for such corporation, or the creditors thereof, in whole or in part, "and whether resident within or without this State, and created,

"constituted, or appointed by such corporation, or pursuant to any "law of the United States, or of this, or any other State or "country."

The second section of this act provides for the *enforcement of satisfaction* of such debt or demand, by suing out a writ of attachment, therein making the corporation by name, defendant. Section 4 provides that—"From the issuing of the writ to final "judgment and satisfaction, all the provisions of law shall apply to "suits commenced under this act, so far as the same may be con- "sistent therewith, and no further." *Vide* Session Laws of Wisconsin, 1853, pages 102 and 103, chapter 106.

This act was badly printed; and in 1854 was re-enacted in more perfect form. *Vide* Session Laws, Wis.: 1854, pages 48 to 51 inclusive.

In this act it is, among other things, provided that—"The judg- "ment rendered in any suit as aforesaid shall be a lien, as in other "cases, from the time of the rendition thereof."

Section 7 provides that, "All actions or suits heretofore com- "menced under the act entitled 'An Act Concerning a Writ of "Attachment, approved July 12, 1853,' and printed or published "as Chapter 106, of the Session Laws, of the year last aforesaid, "shall be continued and proceeded with to final judgment and "satisfaction, and shall be governed hereafter by the provisions of "this act, and the aforesaid chapter one hundred and six of the "laws of the year last aforesaid, is hereby repealed, but the repeal "aforesaid shall not affect or divest any right or lien accrued or "acquired thereunder."

August 13th, 1853, Henry Corwith filed with the clerk of the Circuit Court for LaFayette county, his affidavit for a writ of attachment, under said act of July 12, 1853. The writ issued the same day, and among other lands in LaFayette county (formerly a part of Iowa county), the land in question was attached. (Record pages 74 to 79.)

Declaration in Assumpsit was filed in this action October 17, 1853, in open court.

Corwith counted on certificates issued by the bank, which were in the following form:

"50 50 50

"This certificate, for fifty dollars, will be received at all times "by the State Bank of Illinois, in payment of any debts due the "Bank, and for any property which the Bank may have for sale "It will also entitle the bearer to the proper proportion of all divi- "dends which may be made to the creditors of the bank.

"Springfield, February 10, 1843.

"T. MATHER, President.
"N. H. RIDGELY, Cashier.

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(Record p. 82 to 87.) The Bank, by Logan & Eaton, its attorneys, pleaded *non assumpsit* May 30, 1854. (Record p. 89.)

October 19, 1854, John Calhoun, Uri Manly and Nicholas H. Ridgely, as trustees of the Bank, filed their motion to dismiss the attachment. (Record p. 89, 90.)

The cause was tried before a jury and a verdict was found for $16,687, upon which judgment was rendered October 20, 1854. (Record, 96-97.) April 23, 1855, execution was issued to the sheriff of LaFayette county, upon which the sheriff made return that he had (among other lands) sold the quarter section now in question to James H. Earnest, for the sum of $615, on the 23d day of July, 1855. (Record, 103 to 107.)

After this, and on the 17th day of November, 1855, the judgment in favor of Corwith, was, for error reversed, and a venire *de novo* awarded. (Record, 127.)

After the cause was remitted from the Supreme Court, and on

"constituted, or appointed by such corporation, or pursuant to any "law of the United States, or of this, or any other State or "country."

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After the cause was remitted from the Supreme Court, and on

the 21st day of April, 1858, Corwith submitted to a non-suit. (Record, 128.)

Previous to this, and on the 21st of April, 1857, motion was made by "The State Bank of Illinois" to set aside the sales made on execution pending the writ of error without a supersedeas.

On the 25th day of May, 1857, this motion was granted, and the sales were set aside by orders of the Circuit Court, as to all the purchasers, twenty-six in number. (Record, 129 to 131.)

From these orders each of the purchasers appealed to the Supreme Court; and, on the 11th day of August, 1858, the same were reversed. (Record as to J. H. Earnest, 172–173; and as to the defendant in error, 176–177.)

Another motion was made and a portion of the sales were set aside, and refused as to others. Each side appealed. The order as to refusal to set sales aside was affirmed, and was reversed so far as the sales were set aside. (Record, 144–145.)

The plaintiff in error read in evidence various acts of the legislature of the State of Illinois relating to the State Bank of Illinois and the Bank of Illnois. (Record, 28 to 57.)

October 31st, 1848, the Governor appointed N. H. Ridgley, Uri Manly and John Calhoun trustees of the State Bank of Illinois. (Record, 57.)

March 21, 1859, Calhoun resigned his trust, and James Campbell was appointed trustee by Manly and Ridgely. (Record, 59 to 60.)

James H. Earnest, the purchaser on behalf of the plaintiff in error, testified that he was the person who bid in the premises in controversy at the sheriff's sale in 1855, and that he knew the premises. That he assigned his certificate of sale to the defendant in error. That at that time he knew that everybody said that the bank had made an assignment to the trustees for the purpose

of winding up its affairs, and that the lands he bought were included. That he frequently heard it spoken of, at, and prior to the sale—also that the trustees denied Corwith's right and the sheriff's right to sell. That he knew there was a question about the title at that time. That before the sale he understood Mr. Corwith had said he would indemnify any purchaser at the sheriff's sale from any loss. That he felt that Corwith would stand by them in case they had trouble, or in case they should lose the land. That he felt that he would save him from loss, but that he never had any understanding with Corwith to that effect.

James Campbell, also in behalf of the plaintiff in error, testified that he was the person named as trustee in Gear's deed of trust to him dated November 2, 1842. That he at that time was Cashier of the Branch Bank of the Illinois State Bank, located at Galena.

That in 1841 he became Cashier, and remained such, and agent of the bank during 1842. That at the date of the trust deed he, as agent and cashier of the bank, and directed by Colonel Mather, President of the State Bank, had a settlement with Gear. That everything was included in the settlement.

That the Gear mortgage for $135,000 was included, and was paid by Gear in full, and the notes were delivered up to Gear, five in number. That he was directed to satisfy the mortgage on the record. That this was done in Illinois, and if not in Wisconsin, the neglect was purely accidental; the deed of trust was taken in full satisfaction of the mortgage, and by the settlement Gear's whole indebtedness to the bank was paid and satisfied in full, and thereafter he owed nothing whatever to the bank on the mortgage dated in 1838, or upon anything else; it was a complete settlement by Gear of all his business affairs with the bank up to that time. That he was, and is trustee of the bank since April 1st, 1859.

John Bracken, also in behalf of the plaintiff in error, testified:

That in 1853 he was agent of the trustees of the State Bank of Illinois, and that he had known the defendant since 1838, and since that year he had resided in La Fayette county, three or four miles from the land in controversy.

That in 1853 he, Bracken, had notice published in the Galena Gazette, Mineral Point Tribune, Grant County Herald and the Madison Journal, signed by the trustees, offering all the lands formerly owned by the bank for sale; and, that he had bills freely circulated to the same effect; had them distributed all through La Fayette and Iowa counties. That on the day appointed for the sale of the lands in La Fayette county, at Shullsburgh, the place appointed for the sale, he was there, and *thinks* he saw Mr. Scales, the defendant, there also. Of that he was quite certain, and that he talked with Scales on that day.

That John Calhoun was also there, and he thinks James Campbell. That an attachment was served by Corwith on the lands, and the trustees publicly adjourned the sale in consequence. That notice was given that payment would be received by them, the trustees, in the money of the State Bank. That he, at that time, gave public notice that the sale was postponed. That this was done in consequence of Corwith's attachment; thinks the defendant (Scales) was there at the time.

The defendant in error, on behalf of the plaintiff in error, testified that he had no recollection of being in Shullsburg on the day appointed for the trustee's sale; that he might have been—was not positive; that he had talked with Mr. Bracken, who thought he was; that he did not know much about the title of trustees of the Illinois State Bank; had heard of an assignment; he supposed the trustees owned the lands or Corwith wouldn't have attached them; that he was a juror on the trial of the Corwith case, and heard all the papers that were read before the jury.

The plaintiff in error also read the deposition of Cephas Foster, showing that the defendant Scales was a subscriber to the Galena, Weekly Gazette; and that for four weeks, beginning May 31-1853, an advertisement in said paper, signed by the three trustees, giving notice to the public of the sale of the lands in which the bank formerly had an interest. The list is appended to the deposition, *but it does not contain the land in question in this suit.*

This witness stated that Scales paid him money for subscription for the Gazette, and that at that time Scales said that he never read the *paper himself*, but took it because his wife wanted it. This was on cross-examination This oral testimony and deposition will be found on pages 183 to 189 printed record.

The act of January 24, 1843, passed by the Legislature of Illinois, provided as follows:

"SECTION 3. Said bank is hereby required to go into immediate "liquidation upon the passage of this act; it shall not in future "discount any note, lend any money, buy or sell any bill of ex- "change, issue any paper for circulation, or receive any deposits, "or do any other act usually done by banks, except to wind up its "affairs, collect and secure debts, and *pay* the debts of the bank, "sell its real and personal estate, issue the certificates for balances "provided for in the second section of this act, renew the notes of "its debtors from time to time, upon the payment of installments, "one-fifth each time, *and to sue and be sued* in relation to all its "dealings; for which purposes, and for no others whatever, the "charter of said bank is continued for the term of four years from "the fourth day of March next, and no longer." [Record 46.] "The last section of this act gives the form of certificates to be "issued." [Record 50.] Section 13 of the act approved February 28, 1845, contains this provision, and under which the plaintiff in error claimed that the trustees Manly and Ridgely were authorized to appoint Campbell a trustee in the place of Calhoun, resigned.

"SECTION 13. Should any *of the persons* named in this act "*as assignees* die, resign, or refuse to act, the vacancy may be filled "by the remaining assignees, and on their failure or refusal so to "do, the Governor shall fill such vacancy," etc.

Albert G. Caldwell, E. Z. Ryan, John J. Harden, and Samuel Dunlap were the persons named in that act upon *whose death, resignation*, or refusal to act, the *power* of appointment to *vacancy* vested. [Record 63.]

Ridgely, Manly and Calhoun were appointed trustees by the Governor of Illinois, under the act entitled "An act for finally "closing the affairs of the State Bank of Illinois." Approved March 1, 1847.

By the first section of this act the use of the charter of the Bank is extended until the first day of November, 1848 in addition to the time theretofore granted by the act of January 24, 1843, this additional use of the charter "being subject to all the con- "ditions, restrictions, and limitations contained in said third sec- "tion, and all other portions of the said act, and all acts supple- "mental thereto."

It is further provided by the act of March 1, 1847, as follows:

"SECTION 2. If the affairs of the said bank shall not be closed "before the first day of November, 1848, the Governor shall "appoint three trustees, whose duty it shall be to take charge of "all the assets of the said bank and wind up its affairs, they being "governed in doing so by the provisions of an act entitled an act "supplemental to an act to reduce the public debt one million "dollars, and to put the Bank of Illinois into liquidation, ap- "proved the 28 February, 1845, *so far as said provisions are appli- "cable.*"

"SECTION 4. That all certificates issued by said bank in pursu- "ance of the provisions of the above recited act, and all the notes "issued by said bank in the hands of the school commissioners of "the several counties in this State, or in the hands of any treas- "urer of any school district, at the passage of this act, shall, from "and after the 4th day of March next, draw interest at the rate "of six per cent. per annum until they shall be taken up. *And "the said bank is hereby required to pay said interest as aforesaid.*"

"SECTION 7. The real estate of said bank shall be liable to tax- "ation and *sale on execution in the same manner as the property of individuals.*" [Record 55.]

Mr. Uri Manly died in 1864. [Record 56.]

On the 25th day of June, 1858, on the petition of John Bracken, an injunctional order was made at Chambers by the Judge of the Circuit Court for Lafayette County, Wisconsin, as follows, to wit:

HENRY CORWITH
vs.
THE STATE BANK OF ILLINOIS, } [S.S]
LAFAYETTE COUNTY,

"It appearing satisfactory to me the affidavit of John Bracken, "as contained in the above petition, that sufficient grounds for an "order of injunction exist, I do hereby order that the Sheriffs of "Iowa County, Grant County, and Lafayette County, Wisconsin, "and each of them refrain from executing deeds upon either or "any of the executions specified in the above petition until the "further order of this court."

"Given under my hand this 25th day of June, A. D., 1858.

M M. COTHREU,

Circuit Judge."

The plaintiff in error offered to prove by Sutter, the Sheriff who made the deed to the defendant in error in consummation of the sale of the land in controversy to James H. Earnest, that the defendant, Scales, had indemnified him as such Sheriff, by bond, from any loss that he might sustain by reason of executing said deed to the defendant; and that said bond of indemnity was required by said Sheriff by the defendant before said Sheriff would execute such deed to the defendant; and that the Sheriff told the defendant that he was enjoined from executing a deed of the premises to the defendant; and that a certified copy of the petition and order of injunction had been served on the Sheriff; and that the Sheriff had no certificate of sale, nor did said defendant have any certificate of sale, present or in existence, when said Sheriff made said Sheriff's deed; and that said injunction had been served upon said Sheriff months previous to defendant's application to him for the deed, and before the remittitiur had been filed, showing that the Circuit Court order setting aside the Sheriff's sale had

been reversed; and that said injunction had in terms never been vacated or dissolved by the court.

To the proving the things offered by the witness, Sutter, the counsel for the defendant in error, objected, and the objection was sustained. (Record, 198.)

The plaintiff in error prayed *quite* lengthy instructions, numbered in successive order from "*first*" to "*thirtieth.*" The record shows that the court refused to give any of the whole series, except the first, and whether that was given or not does not appear. Before proceeding to the consideration of the instructions given and refused by the court, it will be best to refer to the statutes of Wisconsin, and quote such parts as show the validity of the execution title of the defendant in error. Revised statutes 1849, chapter 112, page 590. Of this chapter section 21 is important as to the execution in favor of Corwith against the State Bank of Illinois. Section 21. "When a copy of the attachment shall "have been personally served on the defendant, or *such defendant* "*shall have appeared in the suit*, judgment shall be rendered, *and* "*execution shall issue thereon*, in the same manner and *with the* "*like effect* as in a suit commenced by summons, in which the "summons shall have been returned personally served, except "that by virtue of such execution the officer to whom the same "shall be directed and delivered may *sell any property attached* in "the suit, and remaining in the hands of the officer who served "the attachment, wherever the same may be in this State."

Revised statutes 1849, chapter 102, page 534, provides that judgments shall be liens on the real estate of the judgment debtor, and for sale thereof by virtue of execution. By section 32 of this chapter, page 538, it is declared that "Executions, either against "the body in cases allowed by law, or against the property of any "party, may be issued at the same time to Sheriffs of different "counties." Again, section 65, page 542, "Lands, tenements and "real estate, holden by any one *in trust*, or *for the use of another*, "shall be *liable* to debts, *judgments*, decrees, *executions* and attach-"ments against the person *to whose use they are holden.*"

Section 100, page 547, " The right and title of the persons against " whom the execution was issued, to any real estate which shall " be sold thereby, shall not be divested by such sale, until the " expiration of twenty-seven months from the time of such sale; " and if such real estate shall not have been redeemed as herein " provided, *and a deed shall be executed in pursuance of a sale, the* " *grantee in such deed shall be deemed vested with the legal estate* " *from the time of the sale on such execution*, for the purpose of " maintaining *an action* for any injury to such real estate." Section 101 provides that such deed of " *conveyance shall be valid and* " *effectual to convey all the right, title and interest which was sold* " *by such officer.*"

Section 117, page 550, provides that " in all cases where real " estate has been, or shall hereafter be, sold in pursuance of law, " by virtue of an execution, it shall be the duty of the officer, *or* " *his successor* in office, or other person who sold, or shall hereafter " sell, such real estate, to execute a deed of the premises so sold " and unredeemed, agreeable to the provisions of law, either to the " original purchaser or to the creditor who may have acquired the " title of such original purchaser, or to the creditor who may have " purchased such title from any other creditor, or to the *assignee*, " as the case may be, of the certificate of sale executed on such " sale, to the purchaser of the premises therein described." The foregoing section 65 was continued in the revised statutes of Wisconsin of 1858, section 37, page 788; as were also the above mentioned sections, 100, 101 and 117, sections 70 and 71, pages 792, 793 and section 87, page 795.

By chapter 57, revised statutes 1849, page 318, it is provided that " Uses and trusts, except as authorized and modified in this " chapter, are abolished; and every estate and interest in lands " shall be deemed *a legal right*, cognizable as such in the *courts of* " *law*, except when otherwise provided in this title."

Section 2. " Every estate which is now held as an use, executed " under the laws of this State, as they formerly existed, is con- " firmed as a legal estate."

Section 3. " Every person who, by virtue of any grant, assign-
" ment or devise, now is or hereafter shall be entitled to the actual
" possession of lands, and the receipts of the rents and profits
" thereof, in law or equity, shall be deemed to have a legal estate
" therein, of the same quality and duration, and subject to the
" same conditions, as his beneficial interest."

Section 4. " The last preceding section shall not divest the
" estate of any trustees, in any existing trust, where the title of
" such trustees is not *merely nominal*, but is connected with some
" power of actual disposition, or management, in relation to the
" lands which are the subject of the trust."

These provisions are continued in the revised statutes of 1858, and are still the law of Wisconsin.

This lengthy statement has been thought necessary in order that the various legal questions proposed to be raised by the plaintiff in error, under the exceptions taken at the trial, might be the better considered and understood.

These questions are mainly presented by the exceptions to the refusals of the Court below to charge the jury as requested.

The defendant having admitted on the trial, that he was in possession of the premises in question, it was a mere question of law whether the plaintiff or defendant was entitled to a verdict.

I.

Hezekiah H. Gear had no title to the land in question when he made his quit-claim deed thereof to the plaintiff in error, because the moment he acquired the fee from the United States by the patent dated September 1, 1852, that title either vested in James Campbell, under the covenants in the trust-deed made by Gear, November 19, 1842, or in the State Bank of Illinois in virtue of the Statutes of Wisconsin upon the subject of uses and trusts above recited; or that fee vested in the Bank under Gear's covenants in his prior mortgage to the Bank.

It is quite immaterial whether Gear's fee by patent vested in Campbell or in the Bank, so far as concerns the question of the plaintiff in error getting title from Gear, as that title upon being acquired momentarily, vested either in Campbell or the Bank, and of course that title not being in Gear he could not convey it to the plaintiff in error. Gear's deed to the plaintiff in error must therefore be laid wholly out of view in considering the question whether the latter has title.

II.

If the fee to the land vested in the Bank under Gear's covenants in his mortgage to that corporation, then that title was in the defendant in error in virtue of the Sheriff's deed to him in completion of the execution sale under the judgment obtained by Corwith against the Bank.

The sale was made in July, 1855, and all right and title of the Bank was divested within twenty-seven months from the day of sale, so that by the first day of October, 1857, the Bank had no title which could be conveyed by either the Bank or the trustees thereof, had they all joined in making a deed of conveyance to the plaintiff in error.

The land, not having been redeemed, was gone so far as the Bank or its trustees were concerned, and when the Sheriff's deed was made to complete the execution sale, it, for title, would by *relation* go back to the sale. (*Landes* v. *Brant*, 10 Howard, U. S. 372, 373 and cases there cited.)

All this is true, if, under the statutes of uses and trusts, the fee of Gear vested in the Bank or its trustees,, under Gear's covenants in his deed to Campbell, in trust for the Bank and its creditors. Hence the subsequent deeds of Ridgely, Mauly and Campbell, as trustees and assignees of the Bank, and of Ridgely and Campbell as such trustees and assignees passed no title to the plaintiff in error.

III.

If the fee vested in Campbell under the covenants in Gear's trust-deed to him, then he took and held that fee for the uses and upon the trusts and conditions contained in the deed by which he had any right or title as trustee. When he accepted that deed, and the trusts therein specified, he became conclusively bound by all the stipulations with regard to the same. The great and important one was, that he would sell and convey the lands therein described for *such sums as the Bank should direct.*

Without *such direction* he had *no power* whatever to sell or convey. No proof was offered to show that the Bank had directed Campbell to sell to the plaintiff in error, at any price whatever; nor that the assignees or trustees of the Bank, standing in its shoes, had given Campbell any such direction. Without such direction by the Bank, or of the assignees or trustees thereof, the deed of Campbell to Magoon would be void for want of power, by the *terms* and legal effect of the trust-deed, by which Campbell held the land; and this lack of power in Campbell, appearing by the record of the deed from Gear, Magoon knew that he was getting no title by deed from James Campbell.

IV.

The execution sale made in July, 1855, and the sheriff's deed thereon, passed all the interest and title of the bank to the land in question to the defendant in error, whether legal or equitable, and whether acquired by estoppel or rebutter, under Gear's covenants in his mortgage to the Bank, or in his deed of trust to Campbell, is immaterial. And this as well by the Statutes of Wisconsin: 1st, The Act approved July 12, 1853. (Ses. L., pages 102, 103, and the same act perfected in Ses. Laws of 1854, pages 48 to 51, as by Rev. Statutes 1859, page 542, sec. 65; Rev. Statutes 1858, page 788, sec. 37. This last section reads :

"Lands, tenements and real estate, holden by any one in trust "for another, shall be liable to debts, judgments, decrees, execu- "tions and attachments against the person *to whose use* they are "holden."

Again, "The word 'person' may extend and be applied to "bodies politic and corporate as well as to individuals." Rev. Statutes 1849, section 12, page 59; Revision of 1858, sec. 12, page 82, is the same section re-enacted.

The words "land" or "lands" and the words "real estate" and "real property" "shall be construed to include lands, tenements, "and heriditaments, *and all rights thereto and interests therein.*" Rev. Statutes, Wis., 1848, page 82, sec. 9; Rev. Statutes, 1849, page 59, sec. 9.

If the title was legal, which passed to the defendant Scales under the execution sale, then it is clear that there was nothing of title in the bank, in its trustees or assignees, nor in Campbell, which could be, by any or all of them, conveyed to the plaintiff Magoon at the time their several deeds were made. If the title was merely equitable, which the defendant Scales acquired under the execution sale, with the legal title in James Campbell, in virtue of the deed of trust to him from Gear, *then* the *sole* power once vested in the bank was vested in the defendent Scales to direct the sum for which the lands in question could or should be sold or conveyed by Campbell to Magoon, the plaintiff, or to any one else. As there is *no pretence* that the defendant Scales even gave any direction to Campbell to sell or convey the land for *any price* whatever, to say nothing of the "*one dollar*" mentioned in the deeds of Campbell and of the trustees and assignees of the bank, it is clear that no title passed by either of the deeds made by Jas. Campbell to the plaintiff in error. This exhausts all the evidences of title in the plaintiff in error, except the quit claim from La-Fayette County, based on a tax deed predicated upon a sale for the taxes of 1847. There was no evidence offered to show that the tax sale proceedings were conducted according to law. But

allowing that they were all regular, no title passed by that deed, as the land in 1847 belonged to the United States and was not subject to taxation. After this year, and in 1851, the land was purchased by Gear, and he got his patent therefor in 1852.

The plaintiff in error upon the record stands before the Court with no title whatever. Hence the giving or refusal to give any instruction cannot on this record be successfully assigned.

V.

The general doctrine of equity or of the common law as to trusts, trust estates, trustees and *cestui qui trusts*, and of what may be sold on execution, has nothing to do with the case at bar. The statutes of Wisconsin control and settle the whole question of title in favor of the defendant in error.

The land lying in the State of Wisconsin could only be lost or acquired as provided by the laws of that State. Those laws provided that the land in question might be attached, and sold on execution, and upon the sale being completed, by the execution of a deed by the officer making the sale or by his successor in office, the statute declares that "the grantee in such deed *shall be deemed* "*vested with the legal estate from the time of the sale on such exe-*"*cution* for the purpose of maintaining an action for any injury "to such real estate." This language applies to all lands and interests in lands which may be sold on execution. And not only this, but makes the titles in virtue of the deed *relate* back to the time when the same was sold.

So that, had the plaintiff in error, James Campbell, or the trustees or assignees of the State Bank of Illinois, went upon the land at any time after the sale, and cut down trees or dug and taken mineral therefrom, the defendant, Scales, for that injury could have maintained an action against them. Scales therefore had a title which gave him a right to the actual possession of the land.

VI.

When by the statute it is declared that "*lands, tenements and* "*real estate*, holden by any one in trust or for the use of another, "shall be liable to debts, judgments, decrees, executions and at- "tachments against the person to whose use they are holden," the meaning is, that all the title *therein* or *thereto*, as well that vested in the trustee as in the *Cestui que trust*, shall pass to the purchaser on an execution sale. This language is very different from saying that the right, title and interest of the beneficiary may be sold, or that equitable titles may be sold. The sale is not of a mere interest, or right in the land, but of *the land* itself, although held by a trustee. And the statute declares that the whole title shall pass by such sale, when it is declared that the words "land," "lands," and the words "*real* estate" shall be construed to include lands, tenements and hereditaments, *and all rights thereto and interests therein.*

"*All* rights thereto and interests therein," must pass both the *legal* and *equitable* title, because there can be nothing else in the nature of title than these two. Hence by the Sheriff's *sale* and *deed*, the legal and equitable title to the premises in question, vested in the defendant Scales from the time of the sale under the execution.

VII.

This sale to Earnest, the assignor of the Sheriff's certificate of sale, was sustained by the Supreme Court of Wisconsin.

Corwith et al. v. *The State Bank of Illinois*, 18 Wis., 565, 566.

Vide, also *Corwith* v. *The State Bank of Illinois*, 15 Wis., 289, and *Corwith* v. *The State Bank of Illinois*, 8 Wis., 376.

VIII.

Were it conceded that the Sheriff's deed to the defendant Scales did not for title relate back to the sale, yet as it was made before trial, the deed was evidence of title in the defendant, and it was a title which he, to protect his possession, might have bought, certificate of sale included, after this action was commenced.

Tucker's Ex'ors. v. *Keler*, 4 Vermont, 163, 164.
Jackson v. *Given, et al.*, 8 Johns, R. 140, 141.
Jackson v. *Smith*, 13 Johns, R. 413, 414.

IX.

The trust of Campbell under the deed from Gear was merely nominal, he had no power of actual disposition over the land covered by the deed. He could only sell for such sum as the bank should direct. The whole use and power of direction, or discretion to fix the purchase price, being vested in the bank, the trust estate became a legal estate in the beneficiary, under the statutes of uses and trusts, above referred to and recited. These statutes took effect the 1st day of January, 1850. These provisions were copied from the statutes of the State of New York, and, *after* they had received a construction in that State. That construction was adopted with the statutes.

In the matter of DeKay 4, page 403, 404.

X.

In the Circuit Court it was objected, and may be objected in this court, that the judgment in favor of Corwith, under which the defendant claimed title in virtue of an execution sale, was void, because the suit was not brought against "The President, Direc- "tors and Company of the State Bank of Illinois,' the name by which that institution was incorporated, and that the judgment

being void no title passed to the defendant in error by the sale and Sheriff's deed. There are a number of answers to this objection.

1. That objection cannot be taken collaterally.

2. The bank having appeared by the name of "The State "Bank of Illinois," and pleaded *non assumpsit*, that objection could not have been taken in that cause on a writ of error; nor in any other way.

3. The act of 1853, under which the attachment issued, expressly provided that the defendant nominally should be the corporation, and that trustees, assignees and agents might appear and defend, and that was done in the name by which the bank was sued.

4. By the legislation of Illinois with reference to this institution, subsequent to the passage of the incorporating act, that body is called the "State Bank of Illinois," and that legislation was accepted by the bank, and hence its name was changed. (See Record, 39, 45, 50.) On this last page it will be seen that the form of certificates (such as Corwith brought his action on) is given, and the contract is made by and in the name of the State Bank of Illinois. Having contracted by that name, the suit was properly brought against it by the same name.

XI.

As the plaintiff in error claimed that the trustees of the State Bank could convey the land to him, he was bound to show a deed from them all, in order to show title in himself. Such conveyance being a *private* act, *under a power*, the power could not be executed by any number less than the whole number who were invested with that power. This principle is elementary. Without such deed from those trustees, if they were invested with the legal title by estoppel, or rebutter under any of Gear's covenants, the plaintiff in error could not recover in ejectment, even had there been

no sale of the land under execution issued on the Corwith judgment.

The plaintiff seemed to have been aware of the necessity of a deed from the trustees of the bank, and that Gear, under his covenants, lost the fee simple title the moment he acquired it, and hence he gets one deed from Ridgely and James Campbell, and another from Ridgely, Manly and Campbell. Ridgely and Manly were trustees. Calhoun, the other trustee, had resigned his trust before the plaintiff in error set about getting deeds in order to enjoy the excitement of a lawsuit. But he claims that the remaining trustees, Ridgely and Manly, could and did fill the vacancy created by the resignation of Calhoun. This power is claimed under the second section of the act for finally closing the affairs of the State Bank of Illinois, which declares that it shall be the duty of the trustees appointed by the Governor to take "charge "of all the assets of the said bank and wind up its affairs, *they being governed in doing so by the provisions of an act* entitled an act supplemental to an act to reduce the public debt one million of dollars and put the Bank of Illinois into liquidation, approved the 28th of February, 1845, *so far as said provisions are applicable.*

In passing, it may not be amiss to say that the "Bank of Illinois" was not the "State Bank of Illinois." (Record, 55.)

The section in the act of February 28th, 1845, which it is claimed is "*applicable*," and which authorizes one or two of the trustees of the State Bank of Illinois to fill vacancies in the board, is the 13th on page 53 of the record. This section provides that "should "*any of the persons named in this act as assignees die, resign or* "*refuse to act*, the vacancy may be filled by the remaining "assignees." The persons named in that act as assignees were Albert G. Caldwell, E. Z. Ryan, John J. Hardin and Samuel Dunlap. The power of appointment was made to depend upon the death, resignation or refusal to act of one or more of the four persons last named. If neither of these persons died, resigned or refused to act, the power of appointment could not be exercised by

any of them. So that if this section is "applicable" under the act of 1847, the plaintiff in error, to justify the appointment of Campbell, should have proved that either Caldwell, Ryan, Hardin or Dunlap had died, resigned or refused to act as assignee to the Bank of Illinois. Either of these things might have occurred while there was no vacancy of trustee of the State Bank of Illinois. There then being no vacancy of that board, the power of appointment could not be exercised under section 13 of the act of 1845, although the contingency had in fact happened which authorized the exercise of the power of appointment. And this shows that this thirteenth section is *not* "applicable" to the winding up the affairs of the State Bank of Illinois.

Again, suppose that Calhoun, when first appointed trustee by the Governor, had refused to act, and that Mauley and Ridgely had both accepted the trust, is it not clear that the governor, under the power of appointment given him, must have made another selection?

This is too clear for argument, because he was bound to appoint *three* trustees; and yet the refusal to act would have placed the power in Manley and Ridgely, it that section thirteen is applicable and is the law of the appointing power as to these trustees. The power to appoint in case of *death* or *resignation* is the same as in case of a *refusal to act* in the first instance. So that, inasmuch as the Governor must have made another appointment, and so on until he found a man who would accept the trust, had Calhoun refused to act, he must appoint in case of death or resignation. Having been invested with the power to appoint these three trustees, it was the duty of the governor to fill vacancies, or the power vested in the Court of Chancery, which it is said never lacks a trustee.

It is enough to know that the plaintiff in error has no deed from the three trustees of the State Bank of Illinois, who must all join in order to convey any of the real estate held by them in trust for the Bank or its creditors.

XII.

As by the Statutes of the State of Wisconsin, the title to lands which a purchaser at execution sale gets is recognized as a legal estate, the defence made by the defendant in error was perfects And this being so, it is not necessary to consider the instruction. prayed and refused in detail. It is enough to say, that the whole series of instructions which were refused are based on theories or principles of law outside of the statutes of the State which control the case. And the same is true with regard to the exceptions to evidence.

XIII.

There does not appear by the record a single exception taken to instructions which were given by the Circuit Court. The form of the language as to each instruction is, "To which refusal and de- "cision said plaintiff's counsel did then and there except." It is no where said that "to the giving of which instruction so in "charge to the said jury the said plaintiff's counsel did then and "there except." Yet such, or similar language obviously should be used, when the intention is to preserve an exception to the giving of an instruction.

The nearest approach that was made to such language is as to the twenty-fifth instruction, where the language is, "To which re- 'fusal and decision, *and every part thereof*," &c. The instruction prayed was refused, and the Court charged the jury that, "If the "title was, at the time of the levy of said tax, in the United "States, the land was not subject to tax, and the deed vests no "title in the grantee."

To doubt the correctness of this instruction would be a legal heresy.

By Section 4, chapter 15, Revised Statutes of Wisconsin, 1849,

page 138, it is provided that, "The following property shall be ex-"empt from taxation: 1. All property, real and personal, of the "United States and of this State." By the Act of Congress "establishing the Territorial Government of Wisconsin, approved "April 20, 1836," revised Statutes of Wisconsin, 1839, page 25, section 6, it is declared that, "No tax shall be imposed upon the "property of the United States."

Wisconsin became a State in May, 1848. The tax was levied while Wisconsin was a Territory, and the sale was made and the tax deed issued after she became a State, and the land belonged to the United States until Gear purchased it at the public sale held at Mineral Point, November 3, 1851. [Record 66, 67.] The order of injunction, made long years ago, fell when the Supreme Court reversed the order of the Court setting the sales aside, and held that the purchasers were entitled to deeds. 18 Wisconsin above cited 565.

Upon every view of the case the judgment should be affirmed.

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